

project enthusiastically and thank you for the opportunity to tackle the factual and legal issues presented. I hope this letter provides insights as to why I recommend her highly. If you have any further questions or concerns, please do not hesitate. I will gladly continue the rave. I can be reached at gail.k.johnson@usdoj.gov or 301-509-2989 (personal cellphone).

Yours sincerely,



Gail K. Johnson
Supervisory Trial Counsel and Law Clerk Coordinator
Torts Branch, Civil Division

**New York University***A private university in the public service***School of Law**

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Helen Hershkoff

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June 5, 2023

Dear Judge:

It is a pleasure to recommend Greta Chen for a judicial clerkship with you following her graduation from New York University School of Law in May 2024. Greta was my student and also worked as my Research Assistant, and I have a strong sense of her aptitude, character, and skills. I believe she would be an excellent judicial clerk.

I met Greta her first year at NYU when she was a student in my required course in Civil Procedure. I taught the course via Zoom and by hosting additional office hours and other informal sessions, was able to get to know those students who made use of these opportunities. Greta was among them. She is engaged, curious, and public spirited, and her answers to the questions on the final examination showed strong powers of analysis and an excellent mastery of procedural doctrine.

Based on her academic performance, I invited Greta to work as a part-time summer Research Assistant (I would have been happy to hire her as a Teaching Assistant, as well, but she was already committed to other activities). As an RA, Greta helped to update portions of volume 14 of Wright & Miller's Federal Practice and Procedure, focusing on recent developments involving the United States as a plaintiff. Some of the material was familiar (for example, pleading requirements under statutes such as the False Claims Act), but much of it was not (for example, relator standing and when the United States can litigate on behalf of individuals). Greta undertook this research while working full-time at the Department of Justice in Washington, DC, in the Federal Tort Claims Act division, and she was able to manage her time well and meet all of my deadlines. She showed herself to be precise, comprehensive, and reliable in her research, and I have no doubt that these skills would serve her well as a judicial clerk.

Greta has contributed to the Law School and broader community in many important ways. In particular, she volunteers with the Suspension Representation Project, representing NYC public school students at their suspension hearings. Indeed, she was selected to serve as a case manager, and in that role she evaluates each intake and determines whether to assign the case internally to an NYU student or to refer the client to another organization. The work is demanding; during the 2022–2023 academic year, the Project placed more than 80 cases with consulting attorneys from The Legal Aid Society and other groups as needed. She also serves as Co-Chair of the Asian-Pacific American Law Students Association, and in that position

June 5, 2023

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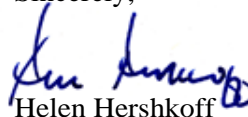
spearheaded fundraising, created the annual budget, and represented APALSA at meetings with the Law School administration and other student groups. Greta also is a member of the Law Review. These positions require maturity, commitment, and common sense—qualities that Greta has in abundance and would serve her well as a judicial clerk. I add that she is analytically sharp, detail-oriented, openminded, and energetic.

Greta grew up in Alabama, the child of Asian American immigrants. She has told me that her family experiences profoundly shaped her views of the law and of the importance of courts. She also gained important professional experience while in Alabama, interning at various law firms in Birmingham over the three summers before entering NYU. She is skilled at navigating diverse groups and enjoys working as part of a team (but also is independent and self-motivated). In particular, she is an active listener, seeks to find common ground, and attempts to reconcile opposing perspectives while remaining authentic.

In short, I recommend Greta with enthusiasm—her intelligence, collegiality, writing ability, and commitment would, in my view, make her an excellent judicial clerk. I would be happy to answer any questions that you might have.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Helen Hershkoff", with a stylized flourish at the end.

Helen Hershkoff



KENJI YOSHINO
*Chief Justice Earl Warren Professor of Constitutional Law
 Director of the Center for Diversity, Inclusion, and Belonging*

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May 26, 2023

The Honorable Jamar Walker
 Walter E. Hoffman United States Courthouse
 600 Granby Street
 Norfolk, VA 23510-1915

RE: Greta Chen, NYU Law '24

Dear Judge Walker:

It is a great pleasure to recommend Greta Chen, a member of NYU School of Law's Class of 2024, for a clerkship in your chambers. Greta took my Constitutional Law class in the fall of 2022. She also served as my research assistant in the 2022-23 academic year. I therefore feel I know her well and am confident in giving her my strongest recommendation.

Students usually take a course with me before serving as my research assistant. In Greta's case the order was reversed. In 2022, NYU implemented a Clerkship Diversity Program that feeds high-potential students into research assistantships with professors. The goal of the program is to support students typically underrepresented in the clerkship process. Greta beat out a highly competitive field to land a research assistant position with me. I am deeply grateful to the program for bringing her into my orbit.

In her personal statement, Greta wrote: "As a queer, Asian-American woman from the Deep South, I am constantly reminded of the power that lies in granting access to spaces that were historically designed to exclude. . . . I am applying to NYU's Clerkship Diversity Program in part because I believe deeply in the importance of representation at the highest levels of the legal profession." She expressed her interest in working on LGBTQ rights, which is one of my fields of specialty.

For the past year, Greta has worked closely with me on a project on so-called "trans-first" jurisdictions. I began this project some years ago, but put it on hiatus to finish a book on a separate topic. It's no exaggeration to say that Greta revived the project through her keen intellect and boundless energy. She functioned at the level of a junior colleague to bring it to a new level of sophistication.

This piece looks at jurisdictions that protect trans-rights more than they do gay rights. Iran, for instance, has state-subsidized gender affirmation surgeries for transgender individuals alongside the death penalty for same-sex sexual conduct. My article argues that we do not see this combination of "pro-trans, anti-gay" positions in U.S. discourse. This is particularly notable because the other permutations are robustly represented—pro-LGBT, anti-LGBT, and "pro-gay, anti-trans" (as espoused by so-called trans-exclusionary radical feminists). The paper argues that the "pro-trans, anti-gay" position is missing because it can only exist in jurisdictions with deeply entrenched sex-stereotyping. It contends that in Iranian society, it is much less subversive for a trans individual to transition and then fade into society as a member of a different sex than it is for a gay individual to engage in a public display of affection with a person of the same sex. The paper concludes by looking at aspects of domestic jurisprudence that protect trans individuals only to the extent that they "code" as stereotypes of the post-transition gender. It argues that this form of protection is unduly limited and regressive, as it is a symptom of enduring sex stereotyping.

Greta was a crackerjack interlocutor on every dimension of the project. One of the challenging aspects of this piece was that it required work at many different levels—including the theoretical, comparative, and doctrinal ones. Greta shone in each of the dimensions. On the theory side, she pressed me hard on the issue of how I was defining "pro-trans" jurisdictions, noting that the countries I was examining did not protect trans people in any sense other than allowing them to transition. It was not only an important descriptive point, but also one that ended up advancing the central argument of the paper. On the comparative side, she vastly deepened my knowledge of the societies I was examining. My main case studies were Iran and Japan, and she was able to scour the scholarly literature to find sources that illuminated the different ways in which trans identities are understood in those jurisdictions. Finally, on the doctrinal aspect of the paper, she canvassed an enormous array of U.S. cases and coded them according to whether they protected trans individuals in a regressive or progressive way.

Kenji Yoshino - kenji.yoshino@nyu.edu - 212-998-6421

In all of this work, Greta excelled on two tracks. She is a big conceptual thinker. As the poet John Hollander once said, she is good at giving “her belief and her disbelief, each when the other not necessary.” At the same time, she was extremely meticulous and detail-oriented. She is a superb line editor and she Bluebooks like nothing you have ever seen. Her ability to do both conceptual and detail-oriented work would make her, in my view, an invaluable clerk.

Greta is also a thoroughly admirable person. A few qualities bear particular note here. First, Greta is tenacious. Based on her stellar work for me, I know we were both disappointed in her grade in my Constitutional Law class (a B-plus). However, Greta never let her grade affect her confidence or passion for the field. If anything, she redoubled her energies in addressing the constitutional law aspects of my paper. Second, Greta is public-spirited. Many LGBTQ students I have mentored from jurisdictions inhospitable to their rights breathe a sigh of relief when they land in New York City and never leave again. Even though her immediate family has moved away from Alabama, Greta feels that she needs to return at some point to the South to “fight the good fight.” I have come to see that she will always run toward an important fight rather than away from it, thinking less of herself than of the folks she might leave behind. Finally, Greta is generous. I noted in my Constitutional Law class that she was unusually quick to see the good in her peers. More broadly, I have seen her extend herself—both on my project and beyond—to seek to understand her ideological opponents. She says she developed this quality growing up as an outsider in the South. Yet I also view it simply as an individual virtue—her first instinct is to humanize rather than to demonize.

For all these reasons, I think Greta will be “one to watch” for years to come. I expect great things from her, and know she will exceed even my high expectations.

If I were you, I would not hesitate!

Sincerely,

Kenji Yoshino

GRETA CHEN

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WRITING SAMPLE

The attached writing sample is a motion to exclude expert testimony that I drafted during my summer 2022 internship at the Federal Tort Claims Act Section of the Department of Justice. I conducted the research myself, and the only document available for citation was the expert witness declaration. This motion has not been reviewed or edited by any third party. I obtained permission from my supervising attorney to use this sample. Some names and other identifying information have been changed.

**DEFENDANT UNITED STATES OF AMERICA’S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO EXCLUDE PLAINTIFF’S EXPERT JANE FOSTER**

Defendant United States of America moves to exclude Plaintiff’s proposed expert, Jane Foster, under Rules 403 and 702 of the Federal Rules of Evidence, *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999), and other applicable case law. The majority of Dr. Foster’s report falls within the scope of common knowledge. Additionally, her testimony on pharmaceutical industry standards is irrelevant to Plaintiff’s allegations of constitutional rights violations under state and federal law. Finally, Dr. Foster’s proposed opinions regarding pharmacy laws and regulations constitute legal conclusions or subjects on which no expert testimony is necessary or allowable.

FACTUAL BACKGROUND

Plaintiff Reddy Vijay Annappareddy alleges that, as a result of the federal government’s use of flawed inventory analyses and destruction of relevant evidence during the course of its Medicaid fraud prosecution, his rights were violated under the federal Constitution and Maryland law. *See Annappareddy v. Pascale*, 996 F.3d 120, 126 (4th Cir. Apr. 26, 2021). At the time of the investigation and prosecution, Annappareddy was the owner of Pharmacare, a pharmacy chain in Maryland and nearby states. *Id.*

On June 20, 2022, Plaintiff submitted an expert report from Dr. Jane Foster, a Professor Emeritus of Pharmacology at the University of Virginia. *See* Expert Declaration of Jane Foster [hereinafter Foster Decl.]. Dr. Foster’s stated expertise is in the “pharmacy industry” and “standards of care for the pharmacy profession.” Foster Decl. ¶ 1, 6.

LEGAL STANDARD

Federal Rule of Evidence 702 governs the admissibility of expert testimony, requiring that (1) the expert’s scientific, technical, or other specialized knowledge helps the trier of fact

understand the evidence or determine a fact in issue; (2) the testimony is based on sufficient facts or data; (3) the testimony is the product of reliable principles and methods; and (4) the expert reliably applies the principles and methods to the facts of the case. Fed. R. Evid. 702(a)–(d). According to the Supreme Court, Rule 702 imposes an obligation upon trial courts to ensure the reliability and relevancy of all expert testimony, scientific or not. *Kumho Tire*, 526 U.S. at 152.

The party offering the expert testimony bears the burden of establishing reliability and helpfulness. *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004); *see also Bourjaily v. United States*, 483 U.S. 171, 175 (1987) (holding that offering party has burden of proving that pertinent admissibility requirements are met by a preponderance of evidence).

ARGUMENT

I. Dr. Foster’s proposed testimony in Sections A, B, and C of her report is within the common knowledge of the trier of fact or otherwise unhelpful.

Federal Rule of Evidence 702 allows expert testimony only “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” Fed. R. Evid. 702(a). To be sufficiently helpful to warrant admission, the expert’s testimony must go beyond the common knowledge and experience of the lay juror. *United States v. Dorsey*, 45 F.3d 809, 814 (4th Cir. 1995); *Kopf v. Skyrms*, 993 F.2d 374, 377 (4th Cir. 1993). “While the fit between an expert’s specialized knowledge and experience and the issues before the court need not be exact . . . an expert’s opinion is helpful to the trier of fact, and therefore relevant under Rule 702, ‘only to the extent the expert draws on some special skill, knowledge or experience to formulate that opinion.’” *Shreve v. Sears, Roebuck & Co.*, 166 F. Supp. 2d 378, 392–93 (D. Md. 2001) (quoting *Ancho v. Pentek Corp.*, 157 F.3d 512, 518 (7th Cir. 1998)).

Dr. Foster's proposed opinions in sections A, B, and C of her report fall within the common knowledge of the layperson. In section A, Dr. Foster explains the importance of medication adherence for patients' health outcomes, which does not require any specialized knowledge or experience to understand. *See* Foster Decl. ¶¶ 9–13. Because the potential harms of non-adherence are easily understood without expert explanation, this Court should exclude these opinions. *See, e.g., United States v. Lespier*, 725 F.3d 437, 449 (4th Cir. 2013) (excluding testimony regarding effects of sleep deprivation because such effects were readily comprehensible). The Fourth Circuit in *Scinto v. Stansberry* found that expert testimony was not required to demonstrate that a doctor's refusal to provide insulin to treat a prisoner's diabetes was an objectively serious deprivation because a jury could, without aid, understand the risks of failing to provide insulin to a diabetic. 841 F.3d 219, 230 (4th Cir. 2016). Likewise, Dr. Foster's examples describing the consequences of failing to take medication as prescribed for various medical conditions are a matter of common sense and would be unhelpful to the fact finder.

Dr. Foster's proposed testimony in sections B and C on the use of automatic refills and medication delivery services to improve medication adherence is similarly unhelpful. *See* Foster Decl. ¶¶ 14–23. The average layperson is familiar with how automatic refills work and their advantages, having encountered that service in everyday life. Dr. Foster is merely stating the obvious, and these opinions should be excluded. *See, e.g., Persinger v. Norfolk & W. Ry. Co.*, 920 F.2d 1185, 1188 (4th Cir. 1990) (determining that testimony regarding the amount of weight safe for a person to lift was not helpful to jury); *Scott v. Sears, Roebuck & Co.*, 789 F.2d 1052, 1055 (4th Cir. 1986) (finding that admission of testimony that higher, nearer section of curb hid displaced, further section from sight and that persons wearing heels tend to avoid walking on

grates was erroneous). Even if the fact finder lacks firsthand knowledge of the pharmaceutical services discussed, these services are easy to understand and do not require an expert for their explanation.

Finally, while Dr. Foster’s proposed testimony in sections D through F on prescription processing, claim reversal, and reverse distribution covers less familiar subject matter, the fact finder is nonetheless capable of independently comprehending how these duties and processes work. *See Foster Decl.* ¶¶ 24–38. “When laypersons are just ‘as capable of comprehending the primary facts and of drawing correct conclusions from them’ as are experts, expert testimony may properly be excluded.” *Scinto*, 841 F.3d at 230 (quoting *Salem v. U.S. Lines Co.*, 370 U.S. 31, 35 (1962)). Here, the fact finder can, unaided by expert testimony, rely on common sense and experience to understand a pharmacy’s duties and operations under the applicable law. *Compare Mod. Remodeling, Inc. v. Tripod Holdings, LLC*, No. CV CCB-19-1397, 2021 WL 5234698, at *4 (D. Md. Nov. 9, 2021) (finding that witness who describes a laptop reset to factory settings and a cloud-based storage system need not be an expert because jury is capable of comprehending both), with *United States v. Offill*, 666 F.3d 168, 175 (4th Cir. 2011) (allowing expert testimony on general operation of securities law to assist the jury because of its intricacy and complexity).

Furthermore, even if the pharmaceutical industry practices described by Dr. Foster are not common knowledge, her opinions are unhelpful to the fact finder because she does not engage in any technical analysis but rather relies only on her “experience, education, and training.” *Foster Decl.* ¶ 6. Dr. Foster does not explain what industry literature—if any—she reviewed to write her report, nor has she ever worked as a pharmacist or pharmacy law professor in Maryland. To the extent that Dr. Foster has not applied her knowledge and expertise to the

facts of this case, her testimony in sections D through F of the report should be excluded. *See Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (“[N]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert.”). Dr. Foster has not articulated any reliable methodology for how she reached her conclusions, and her opinions add nothing beyond what the parties and the Court may ordinarily do. As such, Plaintiff has failed to allege, much less establish, that Dr. Foster used specialized, reliable principles and methods to support her statements in this case as required by Federal Rule of Evidence 702.

II. Dr. Foster’s proposed testimony is irrelevant and would not assist this Court in reaching a decision because it is not tied to the facts of this case.

The “helpfulness” standard of Rule 702 requires a valid connection to the pertinent inquiry as a precondition to admissibility. *Daubert*, 509 U.S. at 591–92; *see also Adell Plastics, Inc. v. Mt. Hawley Ins. Co.*, No. CV JKB-17-00252, 2019 WL 2524916, at *1 (D. Md. June 19, 2019) (“To be relevant, or helpful, an expert opinion must have a valid connection to the pertinent inquiry.” (citing *Belville v. Ford Motor Co.*, 919 F.3d 224, 232 (4th Cir. 2019))). Expert testimony which does not relate to any issue in the case at hand is not relevant and thus is nonhelpful. *Daubert*, 509 U.S. at 591.

Plaintiff’s expert declaration for Dr. Foster states that she will “provide a report describing certain aspects of the pharmacy industry generally to assist the trier of fact in this case in understanding particularly relevant background facts about the industry.” Foster Decl. ¶ 1. However, Dr. Foster’s proffered testimony is irrelevant to whether the prosecution team acted maliciously in creating or destroying the evidence used to indict and convict Annappareddy. In fact, Dr. Foster’s report does not address the conduct of the investigators or prosecutors at all, so

her analysis is not helpful in resolving Annappareddy's federal constitutional or state-law claims. Furthermore, Dr. Foster's testimony lacks connection even to the case that gave rise to this action. In the original prosecution, it was Annappareddy's intentional commission of healthcare fraud, not his negligence or malpractice, that was the source of the dispute. Because Dr. Foster's opinions on standards of care in the pharmaceutical industry lack relevance to the legal and factual issues at hand, they should be excluded. *See, e.g., United States v. Powers*, 59 F.3d 1460, 1472–73 (4th Cir. 1995) (excluding expert testimony that defendant did not demonstrate psychological profile of pedophile where defendant offered no evidence linking non-proclivity for pedophilia with non-proclivity for incest abuse, with which he was charged); *Jones v. Allen*, No. CV PX-15-1173, 2016 WL 9443772, at *5–7 (D. Md. Oct. 24, 2016) (excluding expert testimony on officers' conduct prior to and after employing force in question in excessive force case because it did not assist trier of fact and was irrelevant).

In addition to failing to assist the trier of fact in this case, Dr. Foster's proposed testimony also violates Federal Rule of Evidence 403. Rule 403 provides that evidence is inadmissible, despite relevance, if the evidence is prejudicial, confusing, misleading, or wastes time. Fed. R. Evid. 403. Here, admitting Dr. Foster's proposed testimony, which essentially details standard operations for pharmacies, would introduce collateral issues and unnecessarily prolong the trial. Moreover, Dr. Foster does not attempt to apply these standards specifically to Annappareddy's management of Pharmacare, and thus her testimony adds little probative value. Because nothing in the proffered opinions connects to Annappareddy's claims, they should be excluded under Rule 403. *Cf. United States v. Iskander.*, 407 F.3d 232, 237–39 (4th Cir. 2005) (excluding expert testimony about unclaimed depreciation deductions for hotels owned by defendant's corporation because such evidence was irrelevant and potentially confusing in prosecution for tax evasion of

personal income taxes); *United States v. Ging-Hwang Tsoa*, 592 F. App'x 153, 155–56 (4th Cir. 2014) (excluding expert opinions that failed to address defendant's state of mind in trial for bank fraud and conspiracy to commit bank fraud because admission would confuse the issues and mislead the jury); *Atkinson Warehousing & Distribution, Inc. v. Ecolab, Inc.*, 99 F. Supp. 2d 665, 666–67 (D. Md. 2000) (excluding evidence of alleged thefts by principal of plaintiff and evidence that son of principal mismanaged another business because such evidence was not germane to present suit regarding company's ability to manage warehouse). Finally, as discussed earlier, even if some of Dr. Foster's opinions are relevant, the judge as fact finder can review these background facts independently.

III. Dr. Foster's proposed testimony contains impermissible legal conclusions.

Expert testimony that states a legal standard or draws a legal conclusion is generally inadmissible. *United States v. Blair*, No. CR ELH-19-00410, 2021 WL 5040334, at *9 (D. Md. Oct. 29, 2021) (citing *Adalman v. Baker, Watts & Co.*, 807 F.2d 359, 368 (4th Cir. 1986), *abrogated on other grounds by Pinter v. Dahl*, 486 U.S. 622 (1988)). Several of Dr. Foster's opinions describe the law and make assertions about whether certain pharmaceutical practices were legal under federal or state law and regulations during the relevant period. For example, she claims that neither federal law nor state law in Maryland, the District of Columbia, Pennsylvania, or North Carolina imposed any restrictions on automatic refills. Foster Decl. ¶¶ 16–21. Dr. Foster also draws conclusions about federal and state regulations on claim reversals under Medicare or Medicaid as well as conclusions about reverse distribution during the relevant period. See Foster Decl. ¶¶ 24–29, 37–38. As worded, these opinions constitute impermissible legal conclusions. See *United States v. McIver*, 460 F.3d 550, 562 (4th Cir. 2006) (“[O]pinion testimony that states a legal standard or draws a legal conclusion by applying law to the facts is

generally inadmissible.”); *Burkhart v. Dickel*, No. CCB-12-3320, 2015 WL 9478193, at *4 (D. Md. Dec. 29, 2015) (excluding pure legal analysis, such as quotations from case law); *Peters v. Baltimore City Bd. of Sch. Comm’rs*, No. CIV. WMN-13-3114, 2014 WL 4187307 (D. Md. Aug. 21, 2014) (finding that expert’s testimony citing statutes and case law interpreting those statutes constituted inadmissible legal conclusions).

Admitting such opinions usurps the fact finder’s role by telling the judge what result to reach. Dr. Foster should not be able to testify as to the industry standards and state and federal regulations governing Pharmacare during the period in question because it would impermissibly empower her to evaluate the evidence and apply the law as she sees fit. *See, e.g., United States v. Mallory*, 988 F.3d 730, 741 (4th Cir. 2021) (excluding expert testimony on whether owner and employees of blood testing laboratory had reason to know what their legal obligations were); *Sun Yung Lee v. Zom Clarendon, L.P.*, 453 F. App’x 270, 278 (4th Cir. 2011) (excluding expert reports discussing whether easement could validly be created in deed of partial release, who had authority to create easement in such instrument, and whether fee simple owner’s signature was required). Thus, all of Dr. Foster’s opinions that involve questions of law should be excluded.

CONCLUSION

Plaintiff bears the burden of establishing the reliability and relevance of Jane Foster’s testimony. At present, Plaintiff has not met that burden because Dr. Foster’s expert report does not rely on any specialized knowledge or technical analysis. Additionally, the proffered testimony is not relevant to the alleged misconduct of the investigators and prosecutors or the original healthcare fraud charges. To the extent that Dr. Foster’s testimony is relevant, it is more prejudicial than probative. Finally, many of Dr. Foster’s opinions are merely legal conclusions

that are not appropriate for expert testimony. Thus, this Court should preclude Dr. Foster's testimony under Rules 403 and 702 of the Federal Rules of Evidence.

Applicant Details

First Name	Simon
Middle Initial	G
Last Name	Ciccarillo
Citizenship Status	U. S. Citizen
Email Address	ciccarillo.s24@law.wlu.edu
Address	<div> Address Street 550 Borden Road, Apt. A2 City Lexington State/Territory Virginia Zip 24450 Country United States </div>
Contact Phone Number	860-402-8649

Applicant Education

BA/BS From	Dickinson College
Date of BA/BS	May 2016
JD/LLB From	Washington and Lee University School of Law
	http://www.law.wlu.edu
Date of JD/LLB	May 10, 2024
Class Rank	50%
Law Review/Journal	Yes
Journal(s)	Washington and Lee Law Review
Moot Court Experience	Yes
Moot Court Name(s)	Davis Moot Court Competition

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Professional Organization

Organizations	Just the Beginning Organization
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Recommenders

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

June 14, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

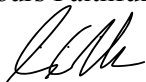
I am a second-year student at Washington and Lee University School of Law, and I write to apply for a clerkship position in your chambers after my graduation in 2024. I am excited about clerking for you in Virginia, where I plan to stay after graduation.

I believe I offer a unique perspective and skillset that would be of true use to you in chambers. While I have frequently been fortunate in life, for example being adopted out of extreme poverty in Colombia to a far better life in the United States, I have faced adversity as a person of color. This is no truer than in the academic field. I was never someone to whom academic pursuits came easily, and in fact had to work incredibly hard to do modestly well. For that reason, I did not always consider clerking to be a viable opportunity I could or should pursue. At the same time, I never let my initial struggles discourage me. I pride myself on taking ownership of my shortcomings, and then doing everything I can to learn from and improve on them. I also want to clerk for you because I am truly dedicated to public service, which I know you hold in high regard. My family raised me to believe the government can and should serve society, and particularly those most in need. Fortunately, I had the amazing opportunity to experience and participate in that work firsthand in DOJ for several years. As I am sure you know, it is necessary to have just prosecutors to enforce the law, and I am inspired by that duty to justice. I believe under your mentorship, I can witness and participate in a fair and impartial administration of the law, ultimately making me a better public servant.

My perspective on clerking, and my research and writing abilities dramatically changed during my first summer internship when I worked for the Honorable Anthony J. Trenga at the Eastern District of Virginia in Alexandria. After becoming invested in clerking, I tailored my experience in law school to include similar experiences going forward. I further developed my research and writing skills through writing my Law Review note, which was selected for publication. Next year, I will be externing for the Honorable Joel Hoppe in the Western District of Virginia. While there, I will continue researching and writing, while increasing my familiarity with chambers. This summer, I am exercising those same skills for the DOJ.

I am confident I possess the requisite skills to be a successful clerk in your chambers. My several years of work at DOJ before law school grounded me in the real-world workforce. My time in law school has provided a series of experiences demonstrating I am a strong researcher and writer. And I hope the next step in this process will be as a member of your chambers by assisting you in chambers. Thank you very much for your consideration of my application.

Yours Faithfully,



Simon Ciccarillo

SIMON CICCARILLO

550 Borden Road, Apartment A2 • Lexington, VA 24450 • 860.402.8649 • ciccarillo.s24@law.wlu.edu

EDUCATION

Washington and Lee University School of Law, Lexington, VA

Juris Doctor Candidate, May 2024 (Cum. GPA: 3.273, Spring 2023 GPA: 3.533)

- **Journal**: Lead Articles Editor, *Washington and Lee Law Review*
- **Publications**: *Scorched Earth: How Equal Footing Can Solve the Western Water Crisis*, Volume 81
- **Honors**: Member, Omicron Delta Kappa
- **Moot Court**: Quarterfinalist: Mock Trial Competition; Participant: Grey Negotiations Competition, Davis Moot Court Competition, Client Counseling Competition
- **Externship**: Judge Joel Hoppe, U.S. District Court for the Western District of Virginia, Harrisonburg, VA
- **Activities**: Vice President: Latin American Law Student Association; International Law Society; Contributing Writer, *The Law News*; Volunteer, Blue Ridge Legal Services; Member, Public Interest Law Students Association

Dickinson College, Carlisle, PA

Bachelor of Arts, cum laude, International Studies and Russian Studies, May 2016 (GPA: 3.52)

- **Honors**: Sigma Iota Rho National Honors Society; Dobro Slovo Slavic Studies National Honors Society
- **Internships**: U.S. Army War College, Department of National Security and Strategy; Safe Horizons, Department of Law and Government; Senate of Colombia, Juan Mario Laserna; Michalik, Bauer, Silvia & Ciccarillo LLP
- **Publications and Interviews**: Testigo Directo News Interviews (2021); *The Russia-Latin America Nexus: Realism in the 21st Century* (2016); *International Relations Between Russia and Latin America* (2016); *Diplomacy vs. Hostility in the Ukraine: Managing the Escalating Crisis* (2015); *The Future of U.S.-Russian Relations: Looking to Young Leaders to Bridge the Diplomatic Gap* (2014)
- **Study Abroad**: Russian State University for the Humanities, Moscow

WORK EXPERIENCE

U.S. Department of Justice, Civil Division, Washington, D.C.

Office of Foreign Litigation Intern, May 2023 – August 2023

- Wrote memorandums on discrete legal issues around salvage law, employment disputes, and proper service.
- Maintained and updated a Department-wide compendium on relevant international caselaw.

United States District Court for the Eastern District of Virginia, Alexandria, VA

Judicial Intern for the Honorable Anthony J. Trenga, May 2022 – July 2022

- Assisted with drafting orders and bench memoranda for a range of criminal and civil matters
- Observed criminal trials, hearings, and other court proceedings to note and research various legal issues

Washington and Lee University School of Law, Lexington, VA

Research Assistant for Professor Russell Miller, June 2022 – August 2023

- Drafted a 22-page memorandum on the development of the doctrine of primacy in EU law for book publication
- Researched using primary and secondary sources, Bluebook citations, and editing for articles

U.S. Department of Justice, Criminal Division, Washington, D.C.

Fraud Section Paralegal, September 2018 – June 2021

- Conducted research for and briefed prosecutors on discrete investigation details
- Prepared witnesses, interviews, evidence, trial materials, and coordinated discovery with opposing counsel
- Facilitated parallel investigations and support with agents from various federal agencies such as FBI, IRS, CFTC, SEC, as well as foreign prosecutors in matters of interest

Fragomen, Del Rey, Bernsen & Loewy LLP, Washington, D.C.

Administrative Assistant and Paralegal, May 2017 – May 2018

- Drafted immigration casework and documentation for large domestic corporations
- Provided translation services for client matters, and for pro-bono immigration work at the U.S.-Mexico border
- Assisted with filings, managed administrative team for data entry, cleanup, and organization

LANGUAGES, CERTIFICATION, & INTERESTS

Languages: Spanish (fluent); Russian (proficient)

Certification: Public Trust Security Clearance

Interests: Bocce, Teaching Salsa and Latin Dance, Hiking Professional Singing, Mounted Riflery, Brazilian Jiu Jitsu

Print Date: 06/01/2023

Page: 1 of 3

Student: Simon Gaetano Ciccarillo

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-0986

Entry Date: 08/30/2021

Date of Birth: 08/23/XXXX

Academic Level: Law

2021-2022 Law Fall

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B	4.00	4.00	12.00	
LAW 140	CONTRACTS	B	4.00	4.00	12.00	
LAW 163	LEGAL RESEARCH	A	0.50	0.50	2.00	
LAW 165	LEGAL WRITING I	B-	2.00	2.00	5.34	
LAW 190	TORTS	C	4.00	4.00	8.00	

Term GPA: 2.713

Totals:

14.50

14.50

39.34

Cumulative GPA: 2.713

Totals:

14.50

14.50

39.34

2021-2022 Law Spring

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	A-	4.00	4.00	14.68	
LAW 150	CRIMINAL LAW	B+	3.00	3.00	9.99	
LAW 163	LEGAL RESEARCH	A-	0.50	0.50	1.84	
LAW 166	LEGAL WRITING II	B-	2.00	2.00	5.34	
LAW 179	PROPERTY	B	4.00	4.00	12.00	
LAW 195	TRANSNATIONAL LAW	A-	3.00	3.00	11.01	

Term GPA: 3.324

Totals:

16.50

16.50

54.86

Cumulative GPA: 3.038

Totals:

31.00

31.00

94.20

2021-2022 Law Summer

05/22/2022 - 08/13/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 888	SUMMER INTERNSHIP	CR	1.00	1.00	0.00	

Term GPA: 0.000

Totals:

1.00

1.00

0.00

Cumulative GPA: 3.038

Totals:

32.00

32.00

94.20

Print Date: 06/01/2023

Page: 2 of 3

Student: Simon Gaetano Ciccarillo

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116

**2022-2023 Law Fall**

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 685	Evidence	B+	3.00	3.00	9.99	
LAW 708	Financial Literacy For Lawyers	C+	1.00	1.00	2.33	
LAW 739	Federal White Collar Crime	A	3.00	3.00	12.00	
LAW 771	National Security Law and Practice	A-	2.00	2.00	7.34	
LAW 806	Habeas Corpus Practicum	A-	3.00	3.00	11.01	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

Term GPA: 3.555**Totals:**

14.00

14.00

42.67

Cumulative GPA: 3.182**Totals:**

46.00

46.00

136.87

2022-2023 Law Spring

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	B	3.00	3.00	9.00	
LAW 716	Business Associations	B	4.00	4.00	12.00	
LAW 725	Conflict of Laws	A	3.00	3.00	12.00	
LAW 804	Environmental Litigation Practicum	A	3.00	3.00	12.00	
LAW 865	Negotiations and Conflict Resolution Practicum	A	2.00	2.00	8.00	
LAW 911	Law Review: 2L	CR	2.00	2.00	0.00	

Term GPA: 3.533**Totals:**

17.00

17.00

53.00

Cumulative GPA: 3.273**Totals:**

63.00

63.00

189.87

2023-2024 Law Fall

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 700	Federal Jurisdiction and Procedure		3.00	0.00	0.00	
LAW 707L	Skills Immersion: Litigation		2.00	0.00	0.00	
LAW 733	Criminal Procedure: Investigation		3.00	0.00	0.00	
LAW 811	Appellate Advocacy Practicum		4.00	0.00	0.00	
LAW 934	Federal Judicial Externship		2.00	0.00	0.00	
LAW 934FP	Federal Judicial Externship: Field Placement		2.00	0.00	0.00	

Term GPA: 0.000**Totals:**

16.00

0.00

0.00

Cumulative GPA: 3.273**Totals:**

63.00

63.00

189.87

Print Date: 06/01/2023

Page: 3 of 3

Student: Simon Gaetano Ciccarillo

Lexington, Virginia 24450-2116

WASHINGTON AND LEE
UNIVERSITY



Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	63.00	63.00	3.273
External:	0.00	0.00	
Overall:	63.00	63.00	3.273

Program: Law

End of Official Transcript



Dickinson College
Carlisle, Pennsylvania 17013-2896
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UNOFFICIAL
TRANSCRIPT

Student No: 900216234 Date of Birth: 23-AUG
Record of: Simon Gaetano Ciccarillo

Date Issued: 28-JUL-2016
Page: 1

Course Level: Undergraduate

Degrees Awarded B.A. 22-MAY-2016

Primary Degree

Major : Russian
Major : International Studies
Dept. Honors: Russian
Inst. Honors: Cum Laude

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
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TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
AP 2012	ADVANCED PLACEMENT		
HIST 117	American History to 1877	1.00 TT	
POSC 150	Comparative Politics	1.00 TT	
SPAN 116	Intermediate Spanish	1.00 TT	
WRPG 211	Topics in Expository Writing	1.00 TT	
Ehrs: 4.00	GPA-Hrs: 0.00 QPts: 0.00	GPA: 0.00	

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Spring 2015	DICKINSON IN MOSCOW-SPS		
INST 000	Rusn Foreign Pol fr 1950-1999	1.00 TA	
Ehrs: 1.00	GPA-Hrs: 0.00 QPts: 0.00	GPA: 0.00	

INSTITUTION CREDIT:

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Fall 2012			
ERSC 142	Earth History	1.00 B-	2.67
FYSM 100	First-Year Seminar	1.00 B	3.00
INST 170	International Relations	1.00 A	4.00
MUEN 009	College Choir	0.00 PRT	0.00
MUPS 113	Piano (1st semester)	0.50 B	1.50
SPAN 230	Advanced Grammar	1.00 A	4.00
Ehrs: 4.50	GPA-Hrs: 4.50 QPts: 15.17	GPA: 3.37	

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Spring 2013			
ANTH 100	Introduction to Biological Anthropology	1.00 B-	2.67
ENGL 101	Hard Boiled: The American Detective Novel	1.00 B	3.00
MUEN 009	College Choir	0.00 PRT	0.00
MUPS 114	Piano (2nd semester)	0.50 B+	1.67
POSC 120	American Government	1.00 A	4.00
SPAN 231	Cuban Literature Inside & Out	1.00 B+	3.33
Ehrs: 4.50	GPA-Hrs: 4.50 QPts: 14.67	GPA: 3.26	

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Fall 2013			
ECON 111	Introduction to Microeconomics	1.00 C	2.00
INST 280	American Foreign Policy	1.00 A-	3.67
LAWP 240	Criminal Procedure	1.00 B	3.00
MUEN 009	College Choir	0.00 PRT	0.00
MUPS 213	Piano (3rd semester)	0.50 A	2.00

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:			
PHED 011	Aerobic Activities	0.00 PA	0.00
PHED 952	Fitness Swim	0.00 PA	0.00
RUSS 101	Elementary Russian	1.00 A-	3.67
Ehrs: 4.50	GPA-Hrs: 4.50 QPts: 14.34	GPA: 3.19	

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Spring 2014			
ECON 112	Introduction to Macroeconomics	1.00 B	3.00
INST 282	Diplomatic History of the United States	1.00 B+	3.33
MUEN 009	College Choir	0.00 PRT	0.00
MUPS 214	Piano (4th semester)	0.50 A	2.00
PHED 922	Strength Training	0.00 FA	0.00
RUSS 100	Russia and the West	1.00 A	4.00
RUSS 104	Elementary Russian	1.00 A-	3.67
Ehrs: 4.50	GPA-Hrs: 4.50 QPts: 16.00	GPA: 3.56	

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Fall 2014			
Dickinson Program in Moscow, Russia			
RUSS 250	Russian Language in Context	1.00 A-	3.67
RUSS 255	Writing Workshop	1.00 A-	3.67
RUSS 265	Moscow Practicum	0.50 A	2.00
RUSS 265	Russian Short Stories	1.00 A-	3.67
RUSS 273	Russia Today	1.00 A	4.00
Ehrs: 4.50	GPA-Hrs: 4.50 QPts: 17.01	GPA: 3.78	

Dean's List

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Spring 2015			
Dickinson Program in Moscow, Russia			
RUSS 251	Russian Language in Context	1.00 A	4.00
RUSS 256	Writing Workshop	1.00 A	4.00
RUSS 265	Moscow Proseminar	0.50 A	2.00
RUSS 280	Research Project in Russian History or Politics	1.00 A	4.00
Ehrs: 3.50	GPA-Hrs: 3.50 QPts: 14.00	GPA: 4.00	

Dean's List

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Summer 2015			
INTR 735	Intern - U.S. Army War College - Peacekeeping and Stability Operations Institute	0.00 PA	0.00
Ehrs: 0.00	GPA-Hrs: 0.00 QPts: 0.00	GPA: 0.00	

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Fall 2015			
FLST 210	Russian Film of the Putin	1.00 B+	3.33

***** CONTINUED ON PAGE 2 *****

Other Pertinent
Academic Information:

Issued To: Simon G.Ciccarillo

Each credit equals 4 hours. 3 credits, 12 hrs., is considered full-time.

Dickinson College
Carlisle, Pennsylvania 17013-2896
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UNOFFICIAL
TRANSCRIPT

Student No: 900216234 Date of Birth: 23-AUG
Record of: Simon Gaetano Ciccarillo

Date Issued: 28-JUL-2016
Page: 2

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:			
Era: 2000-2015			
INST 200	Global Economy	1.00 C+	2.33
INST 401	Globalization, Sustainability and Security: Whole of Society Approaches	1.00 A	4.00
MUEN 009	College Choir	0.25 CR	0.00
MUPS 313	Piano (5th semester)	0.50 B+	1.67
PHED 701	Squash	0.00 PA	0.00
RUSS 333	Aspects of Russian Society and Civilization	1.00 A	4.00
Ehrs: 4.75 GPA-Hrs: 4.50 QPts: 15.33 GPA: 3.41			
Spring 2016			
HIST 118	American History 1877 to Present	1.00 A-	3.67
INST 290	Politics of Oil, Arms, Peace & War: U.S./Russia/Middle East Relations in the 20th & 21st C	1.00 A	4.00
INST 404	Integrated Study	1.00 B+	3.33
MUEN 009	College Choir	0.25 CR	0.00
PHED 071	Basketball	0.00 PA	0.00
SPAN 238	Spanish for Business Professions	1.00 A	4.00
Ehrs: 4.25 GPA-Hrs: 4.00 QPts: 15.00 GPA: 3.75			
Dean's List			
***** TRANSCRIPT TOTALS *****			
	Earned Hrs	GPA Hrs	Points GPA
TOTAL INSTITUTION	35.00	34.50	121.51 3.52
TOTAL TRANSFER	5.00	0.00	0.00 0.00
OVERALL	40.00	34.50	121.51 3.52
***** END OF TRANSCRIPT *****			

Other Pertinent
Academic Information:

Each credit equals 4 hours. 3 credits, 12 hrs., is considered full-time.

WASHINGTON AND LEE
UNIVERSITY SCHOOL OF LAW
LEXINGTON, VA 24450

June 14, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write this letter in enthusiastic support of Simon Ciccarillo's application as a judicial clerk.

I have known Simon for two years in my capacity as a professor at Washington and Lee Law School and as faculty advisor to several student organizations. I am thoroughly impressed with Simon as a diligent student, a conscientious and disciplined worker, and as a highly ethical person.

Two quick stories will demonstrate Simon's resourcefulness, integrity, consensus building skills and ability to meet challenges.

First, an example showing Simon's resourcefulness, his ability to meet challenge and his capacities as a student. Although Simon was an excellent student in college, he frankly had some academic difficulty in his first semester of law school. In addition to teaching Property, Conflict of Laws, Remedies, and Complex Litigation, I serve as the Director of our school's Academic Success program. After his first semester, Simon was one of the student's referred to me to obtain assistance in adjusting to law school academics. I met with him on several occasions and was greatly impressed by his resolve and dedication. I was confident that he would improve. But even I was astonished by how much he improved. In my 15 years teaching, I don't believe I have ever seen a student improve his/her GPA from the first to the second semester as much as Simon did. He improved so much that he was selected to serve on the law review, where he has been excelling. Every year, I devote a workshop that is heavily attended by most 1L students to a panel of upperclassmen explaining to the first-year students how to prepare for and take exams – obviously a matter that causes lots of anxiety for most 1Ls. I asked Simon (then a 2L) to be one of the presenters. I was so impressed with the way he handled himself, frankly telling his counterparts where he had gone astray in his first semester and what he had learned about improving his performance. After the session, students flocked to him for further conversation and advice. Very impressive. Very humble. Very honest. And a great service to other students.

Second, I also spoke with Simon earlier this year when he was deciding what topic he would choose for his law review note topic. Once again, he impressed. He had several topics and had excellent ideas for all of them. His tentative analysis showed excellent legal thinking but also creativity and an ability to determine what issues would likely be of interest in today's society.

In sum, Simon has shown to me that he is a person of great integrity and great resourcefulness. He faces personal and other challenges with courage and humility. He will be a fantastic lawyer and would make a wonderful judicial clerk. I heartily support his application.

Sincerely,

David Eggert
Professor of Practice

David Eggert - eggertd@wlu.edu - 540-458-8335

United States District Court

EASTERN DISTRICT OF VIRGINIA
401 COURTHOUSE SQUARE
ALEXANDRIA, VIRGINIA 22314-5799

CHAMBERS OF
ANTHONY J. TRENGA
UNITED STATES DISTRICT JUDGE

TELEPHONE (703) 299 - 2113
FACSIMILE (703) 299 - 2203

October 19, 2022

To whom it may concern:

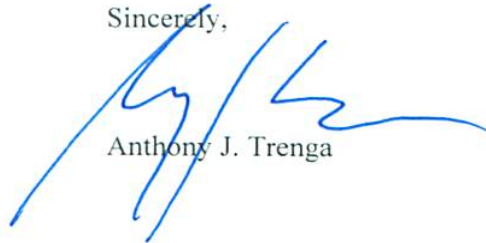
I am pleased to provide this reference and recommendation for Simon Ciccarillo.

Simon served as a summer intern during the period May 16 – July 22, 2022. During that time, he attended two criminal trials, which provided him the opportunity to observe both prosecutors and defense attorneys generally. He was also involved in the research and writing of Bench Memos pertaining to compassionate release motions, sentence reduction motions, habeas petitions and Section 1983 civil actions.

My experience with Simon was positive in all respects. I found him diligent, inquisitive and insightful and a pleasure to work with.

Please let me know if I can provide you any more information.

Sincerely,



Anthony J. Trenga

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 14, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is my pleasure to write at this time to offer the strongest and most enthusiastic possible support for Simon Ciccarillo's application for a clerkship in your chambers. A judicial law clerk must have an impressive command of the law, must be an excellent researcher and writer, must embody the highest degree of professionalism, and must be a pleasure to work with. Simon possesses all of these qualities. There is no other way for me to say it: Simon is one of the most impressive students with whom I have ever worked.

I offer my unqualified support of Simon on the basis of three distinct perspectives.

First, I understand that Simon is an excellent student. His impressive performance in law school demonstrates his ability to grasp legal theory and to learn legal doctrine. I can confirm from my contact with Simon that his academic success transcends the fulfillment of the duty to study and then take exams. I found Simon to be genuinely animated by the intellectual endeavor that is the study of the law. He is prepared for his classes. His curiosity and enthusiasm lead him to ask questions, offer comments, and explore issues beyond the required assignments. Simon is an excellent student of the law.

Second, Simon has served for the last two years as my research assistant. This gives me insight into his excellent research and writing skills, his exceptional professionalism, and his admirable character. Simon is far and away the best research assistant I have ever employed.

Simon has worked for me on a wide range of scholarly projects that required him to engage with complex legal issues from different subjects, different jurisdictions, and different disciplines. Sometimes he did this work under brutally short deadlines. The memos he produced for me are comprehensive, creative, concise, and correct on the law. With modest adaptations for style or tone, I have been able to rely on his written work as a foundation for my final product. That has never before been the case with one of my research assistants. I doubt I will ever be so fortunate again. Simon is a self-starter. He is impressively disciplined and he is always on time with assignments. He sought direction when he needed it. He was open to constructive criticism, because he wanted to produce the best possible product and because he was determined to improve as a young lawyer. Throughout his work for me Simon has exhibited the maturity, responsibility and initiative of a seasoned and reliable professional. I would not hesitate to entrust Simon with any task, no matter how complex or sensitive.

Third, through all of my close contacts with Simon I have had the chance to get to know a lot about his character and personality. Simon is a flexible, open-minded, and confident soul. In our casual conversations he has revealed a sharp and insightful wit, which he deploys to great effect. Simon is a gracious and fun conversationalist. He combines an impressive intellect with extraordinary emotional intelligence. Simon will enrich and enliven your chambers.

It is on the basis of this broad evaluation of Simon's ability and character that I enthusiastically recommend him as an extraordinary young lawyer and person. You will have applications from scores of well-qualified applicants. But you will not find a peer for Simon.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Russell A. Miller
J.B. Stombock Professor of Law

Russell Miller - millerra@wlu.edu

SIMON CICCARILLO

550 Borden Road, Apartment A2 • Lexington, VA 24450 • 860.402.8649 •
ciccarillo.s24@law.wlu.edu

Writing Sample

The attached writing sample is a court order I drafted my 1L summer for a Compassionate Release and Sentence Reduction Petition while at the Eastern District of Virginia as a judicial intern. The assignment entailed researching relevant caselaw, analyzing and applying it to the relevant facts, and drafting the full order. While this is not the complete version of the order, it comprises the Compassionate Release claim. While the total 21-page order is complete and available upon request, it and this truncated version are redacted for background and/or sensitive information to protect the individuals involved in the suit. Finally, I received permission to use this as a writing sample from Judge Trenga.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,)
)
 v.)
)
)
)
)
 Defendant.)
 _____)

[REDACTED]

ORDER

This matter is before the Court on Defendant [REDACTED] (the “Defendant”) pro se Motion for Compassionate Release/Reduction in Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A) (the “Motion”), [Doc. No. 53] (“Mot.”), and Emergency Supplemental Motion Pursuant to the First Step Act § 603(b) and 18 U.S.C. § 3582(c) (collectively, the “Motions”). The United States (the “Government”), submitted its Opposition to the Motions (the “Opposition”), [Doc. No. 58] (“Opp.”), and objects on the grounds that Defendant has not properly exhausted his administrative remedies under 18 U.S.C. § 3582(c)(1)(A), that Defendant cannot demonstrate “extraordinary and compelling” reasons to warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), and that the relief Defendant seeks under § 404 of the First Step Act is neither authorized nor warranted under the circumstances. For the following reasons, Defendant’s Motion for Compassionate Release is **DENIED** but Supplemental Motion for Sentence Reduction is **GRANTED**.

I. BACKGROUND

In 1999, Defendant was convicted for Conspiracy to Possess with Intent to Distribute Fifty Grams or More of Cocaine Base in violation of 21 U.S.C. §§ 841(a)(1) and 846 and sentenced to 292 months of imprisonment, which was reduced to 146 months and four years of supervised release. [Doc. No. 22] (“PSR”) at 14. After serving his term, Defendant was released in April 2008 to complete his supervised release. *Id.* at 15. However, on October 14, 2011, during his supervised release, Defendant was rearrested on a new criminal offense, Conspiracy to Distribute Twenty-Eight Kilograms or More of Cocaine Base and sentenced to 12 months imprisonment for a violation of supervised release (the “2011 Supervised Release Sentence”). *Opp.* at 2; *see generally* 1:99-cr-254 (LMB) [Doc. No. 125]. Defendant then pled guilty on October 18, 2011 to the underlying Conspiracy to Distribute offense; and based in part on being considered a Career Offender, the guideline sentencing range of 188 to 235 months was calculated based on a total offense level of 29 and a Criminal History Category of VI. [Doc. No. 28]. He was then sentenced in January 2012 to 150 months with 8 years of supervised release (the “2012 Sentence”), [Doc. No. 27], based in part on his acceptance of responsibility. This sentence was added onto his 2011 Supervised Release Sentence increasing his period of incarceration to 162-months. *Suppl. Mot.* At 1; *see generally* 1:99-cr-254 (LMB) [Doc. No. 125]. Defendant is currently scheduled to be released on January 24, 2023. *Mot.* At 2.

On October 28, 2021, Defendant filed the Motion requesting that the Court grant compassionate release under 18 U.S.C. § 3582(c)(1)(A) based on alleged water contamination at the FCI [REDACTED], the threat from the COVID-19 pandemic, and Defendant’s conduct and rehabilitation. *Id.* at 1. On December 2, 2021, Defendant filed an Emergency Supplemental

Motion requesting a sentence reduction based on the reduced sentence he should have received under the First Step Act of 2018, presumably with respect to his 2012 Sentence.¹ Suppl. Mot. at 1. The request is in part based on recent intervening Fourth Circuit caselaw.² *Id.* The Government submitted its response in opposition on December 17, 2021. *See generally* Opp. At present, Defendant has served over 90% of his sentence. [Doc. No. 53-1] Mot. at 22.

II. LEGAL STANDARD

A. Compassionate Release

18 U.S.C. § 3582(c)(1)(A) provides that, “upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier,” a sentencing court “may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—(i) extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” *United States v. Redd*, 444 F. Supp. 3d 717, 722 n.6 (E.D. Va. 2020) (quoting 18 U.S.C. § 3582(c)(1)(A)). The Fourth Circuit recently explained, however, that, “[w]hen a defendant exercises his new right [under the First Step Act] to move for

¹ Although the Suppl. Mot. is not entirely clear on this point the Court has construed it most favorably to him as a pro se litigant. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007)

² *See* cases cited *infra* note 9.

compassionate release on his own behalf . . . [the relevant policy statement found in U.S.S.G.] § 1B1.13 [pertaining to compassionate release recommendations by the BOP] does not apply,” and the extraordinary and compelling reasons listed in § 1B1.13 “do[] not constrain the discretion of district courts.” *See United States v. McCoy*, 981 F.3d 271, 281 (4th Cir. 2020). Nevertheless, Section 1B1.13 “remains helpful guidance.” *Id.* at 279. In that regard, U.S.S.G. § 1B.13 cmt. n.1(A)–(D) defines “extraordinary and compelling reasons” to include the defendant’s medical condition, age, family circumstances, or other reasons that are sufficiently extraordinary and compelling to warrant a sentence reduction. *Id.* at 280.

B. First Step Act Motion

The First Step Act of 2018 permits “[a] court that imposed a sentence for a covered offense . . . [to] impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed.” First Step Act of 2018, Pub. L. No. 115-391, § 404(b), 132 Stat. 5194, 5222. The First Step Act defines a “covered offense” as “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010.” *Id.* § 404(a), 132 Stat. at 5222. Sections 2 and 3 of the Fair Sentencing Act of 2010 (“FSA”), in turn, modified the penalties for violations of the crack cocaine statutes at 21 U.S.C. § 841, by increasing the threshold quantities of cocaine base required to trigger the sentencing ranges in § 841(b)(1)(A)(iii) from 50 grams to 280 grams and in § 841(b)(1)(B)(iii) from 5 grams to 28 grams. Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124 Stat. 2372.

“[A] district court presented with a First Step Act motion to reduce a sentence must first determine whether the sentence...is ‘eligible’ for consideration ‘on the merits.’” *United States v. Lancaster*, 997 F.3d 171, 174 (4th Cir. 2021) (quoting *United States v. Gravatt*, 953 F.3d 258, 262 (4th Cir. 2020)). A sentence is eligible for review if: 1) the sentence sought to be reduced is for a “covered offense”³; 2) the motion for reduction must be addressed to the court that imposed the relevant sentence; and 3) the sentence must not have been “previously imposed or previously reduced” pursuant to the FSA, and the petitioner must not have previously filed a motion under § 404 that was “denied after a complete review of the motion on the merits.” *Id.* (citing First Step Act, § 404(b), 132 Stat. at 5222).

According to the First Step Act of 2018, if a sentence qualifies for review on the merits, a district court has the discretion to impose a reduced sentence “as if sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed.” Pub. L. No. 115-391, § 404(b), 132 Stat. 5194, 5222 (2018). The discretion to grant such relief is broad. *Id.* at § 404(c), 132 Stat. at 5222. However, the Fourth Circuit has mandated several steps district courts must take to ensure evaluation of the merits is “procedurally and substantively reasonable.” *United States v. Collington*, 995 F.3d 347, 358 (4th Cir. 2021). Namely, a district court must: 1) in retroactively applying the FSA, determine the new statutory range set by any amended statutory minimums and maximums, *id.* at 357; 2) recalculate the Sentencing Guidelines range by correcting original Guidelines errors and applying intervening case law made retroactive to the original sentence, *id.* at 355; and 3) reconsider the 18 U.S.C. § 3553(a)

³ A “covered offense” is “a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010, that was committed before August 3, 2010.” First Step Act at § 404(a), 132 Stat. at 5222.

factors,⁴ *id.* In so doing, courts are able “to more comprehensively shape sentencing decisions and even depart downward from the new Guidelines range.” *Id.* Pursuant to 18 U.S.C. § 3661, courts may also consider post-sentencing conduct. *United States v. Chambers*, 956 F.3d 667, 674–75 (4th Cir. 2020).

III. COMPASSIONATE RELEASE ANALYSIS

A. Whether Compassionate Release Is Warranted

Defendant first seeks a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) based on “extraordinary and compelling reasons.” For the following reasons, the Court **DENIES** Defendant’s request for compassionate release.

1. The Threshold Requirement

As an initial matter, the Government contests whether Defendant fully exhausted his administrative remedies and therefore meets the threshold requirements of 18 U.S.C. § 3582(c)(1)(A). *Opp.* at 7–8. The Government claims because Defendant only initially raised the motion for compassionate release to the Warden of FCI [REDACTED], that Defendant is now unable to attach COVID-19, his rehabilitation and release plan, or invalid application of law to his claim before the Court. *Id.* However, failure to exhaust remedies can be excused particularly where the

⁴ 18 U.S.C. § 3553(a) factors: 1) the nature and circumstances of the offense and the history and characteristics of the defendant; 2) the need for the sentence imposed; 3) the kinds of sentences available; 4) the kinds of sentence and the sentencing range established for; 5) any pertinent policy statement; 6) the need to avoid unwarranted

arguments are legal and not factual. *United States v. Ferguson*, No. 3:04CR13-01, 2021 WL 1701918, at *4 (E.D. Va. Apr. 29, 2021). “[T]he text...plainly provides that a defendant may file a motion on his own behalf 30 days after the warden receives his request, regardless of whether the defendant exhausted his administrative remedies.” *United States v. Muhammad*, 16 F.4th 126, 129 (4th Cir. 2021); *United States v. Estelle*, No. 20-7471, 2022 WL 205418, at *1 (4th Cir. Jan. 24, 2022); *United States v. Spencer*, No. 20-7171, 2022 WL 355775, at *1 (4th Cir. Feb. 7, 2022). Accordingly, and because more than 30 days have passed since Defendant submitted his request to the BOP,⁵ his motion is ripe for review.

2. Merits

The court now considers whether Defendant has shown “extraordinary and compelling reasons” to justify a reduction in sentence. Defendant claims that such reasons are demonstrated due to a combination of the alleged water contamination at FCI [REDACTED], the COVID-19 pandemic, and Defendant’s rehabilitation and release plan.

a. Water Contamination

Defendant first turns to the alleged water contamination at FCI [REDACTED] to seek compassionate release. Mot. at 7–9. However, Defendant is no longer located at FCI [REDACTED] but is now located at FCI [REDACTED], at which Defendant “makes no similar complaints.” Opp. at 8. “The general rule is that a prisoner’s transfer or release from a jail moots his individual claim for declaratory and injunctive relief.” *McKinnon v. Talladega Cnty., Ala.*, 745

⁵ See Mot. at 4.

F.2d 1360, 1363 (11th Cir. 1984); *see also Holland v. Purdy*, 457 F.2d 802, 803 (5th Cir. 1972) (reasoning that because petitioner was not subjected to the conditions complained of at the time of litigation, the petition should have been dismissed for mootness).

b. COVID-19

Defendant also raises the general effects of the COVID-19 pandemic upon the prison population, and specifically, frequent and longer lockdowns, elimination of visits and phone use, and a generally increased risk of contraction upon Defendant to warrant release. Mot. at 11–12. But “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.” *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020). Indeed, courts within the Eastern District of Virginia have previously declined to grant compassionate release where a defendant merely demonstrated a fear of contracting COVID-19.⁶ As such, these courts generally evaluate whether a defendant has “both a particularized susceptibility to the disease and a particularized risk of contracting the disease at his prison facility.” *United States v. White*, No. 2:07-cr-150, 2020 WL 1906845, at *1 n.2 (E.D. Va Apr. 17, 2020) (internal citation omitted).

Here, Defendant fails to present any specific medical claims of particularized risk of being susceptible to or contracting COVID-19. *See* Mot. at 11–12. At no point does Defendant point to any personalized medical issue that would increase his risk of contracting or suffering from COVID-19. *See generally* Mot. In fact, Defendant received two full doses of the Pfizer

⁶ *See United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020); *see also United States v. White*, No. 2:07-cr-150, 2020 WL 1906845, at *5 (E.D. Va Apr. 17, 2020); *Wilson v. United States*, 2:11-cr-180(5), 2020 WL 3315995, at *3 (E.D. Va. June 18, 2020); *United States v. Feiling*, 453 F. Supp. 3d 832 (E.D. Va. 2020).

COVID-19 vaccination,⁷ with availability of booster shots open to all inmates.⁸ And “for the vast majority of prisoners, the availability of a vaccine makes it impossible to conclude that the risk of COVID-19 is an extraordinary and compelling reason for immediate release.” *United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021) (internal quotations and citation omitted). Because of the mitigating effect of the vaccine, the defendant must offer other evidence to provide an “extraordinary and compelling” reason for release. *United States of America v. Muhammad*, No. 3:14CR55, 2021 WL 3779632, at *2 (E.D. Va. Aug. 25, 2021), *aff’d sub nom. United States v. Muhammad*, No. 21-7354, 2022 WL 541619 (4th Cir. Feb. 23, 2022); *United States v. Stoddard*, No. 1:14-CR-76, 2021 WL 2379568, at *5 (E.D. Va. June 9, 2021), *reconsideration denied*, No. 1:14-CR-76, 2021 WL 4932556 (E.D. Va. June 28, 2021), *and aff’d*, No. 21-7463, 2021 WL 6116619 (4th Cir. Dec. 27, 2021), *and aff’d*, No. 21-7463, 2021 WL 6116619 (4th Cir. Dec. 27, 2021). But Defendant has not done so. Ultimately, Defendant’s seemingly adequate medical care does not favor compassionate release. *United States v. Brunson*, No. 3:12CR113, 2021 WL 2673114, at *2 (E.D. Va. June 29, 2021).

c. Rehabilitation and Release Plan

Defendant finally raises his rehabilitation and release plan as “extraordinary and compelling” reasons supporting compassionate release. Mot. at 10–11, 12–14. Notably, Defendant qualified as a minimum risk for recidivism based on “ongoing evaluation of [Defendant’s] history, work, performance, program performance, disciplinary reports, and more.”

⁷ See Suppl. Mot. at 6.

⁸ See *COVID-19 Vaccine Guidance*, BOP 4 (Oct. 13, 2021) https://www.bop.gov/resources/pdfs/covid_19_vaccine_guidance_v14_0_2021.pdf.

Mot. at 10. Defendant, having served more than 150 months in BOP custody, is now [REDACTED] and has demonstrated a commitment to lawful behavior. He has a minimal disciplinary record while incarcerated, with a disciplinary infraction for possessing a hazardous tool in 2019, and two prior infractions at or before 2003. [Doc. 53-1] Mot. at 17. Defendant has also “completed Drug Education,” a variety of Adult Continuing Education (ACE) courses, and mentoring/counseling groups.” *Id.* Defendant has proven to be a hard worker in his various capacities as a barber (where he served as a mentor and father-figure to other inmates and incarcerated youth), a pharmaceutical orderly, and a cleaning orderly. Mot. at 13. Additionally, Defendant maintains a standing job offer with a transportation company, as well as plans to continue as a community speaker and role model while staying at home with his mother if released. Suppl. Mot. at 9–10. However, while the Court commends Defendant on this progress, courts have not found such improvement sufficient for relief on the basis of compassionate release. *See United States v. Barcus*, No. 1:13-CR-00095 (RDA), 2022 WL 414283, at *7 (E.D. Va. Feb. 9, 2022); *Ross v. United States*, No. 2:19-CR-148, 2021 WL 3625310, at *2 (E.D. Va. Aug. 16, 2021). However, analysis of the 3553(a) factors will militate in favor of a sentence reduction, as found below.

IV. CONCLUSION

Accordingly, for the foregoing reasons, it is hereby

ORDERED that Defendant [REDACTED] Motion, [Doc. No. 53] be, and the same hereby is **DENIED**, but that Defendant [REDACTED] Supplemental Motion, [Doc. No. 55] be, and the same hereby is **GRANTED**; and it is further

ORDERED that Defendant [REDACTED] sentence is reduced to time served with all other applicable conditions applying.

This is a Final Order for the purposes of appeal. To appeal, Defendant must file a written notice of appeal with the Clerk's Office within fourteen (14) days of the date of this Order. A written notice of appeal is a short statement stating a desire to appeal this Order and noting the date of the Order Defendant wants to appeal. Defendant need not explain the grounds for appeal until so directed by the court.

The Clerk is directed to send a copy of this Order to the Defendant at the address listed in the record and to all counsel of record.

The Honorable Anthony J. Trenga

Alexandria, Virginia
July 15, 2022

Applicant Details

First Name	Rachel
Middle Initial	P
Last Name	Clyburn
Citizenship Status	U. S. Citizen
Email Address	rpclyburn@wm.edu
Address	<div> Address Street 501 Promenade Lane City Williamsburg State/Territory Virginia Zip 23185 Country United States </div>
Contact Phone Number	843-718-6322

Applicant Education

BA/BS From	Clemson University
Date of BA/BS	May 2020
JD/LLB From	William & Mary Law School
	http://law.wm.edu
Date of JD/LLB	May 18, 2024
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	William & Mary Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Larsen, Allison Orr
amlarsen@wm.edu
(757) 221-7985

Chason, Anna Perez
apchason@wm.edu
757-509-0076

Grindrod, Andrew
Andrew_Grindrod@fd.org

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Rachel Clyburn
501 Promenade Lane
Williamsburg, Virginia 23185
843-718-6322
rpcllyburn@wm.edu

June 9, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing to apply for a judicial clerkship in your chambers for the 2024 – 2025 term. I am a second-year law student graduating in May 2024 from William & Mary, where I am tied for fourth in my class and serve as a Notes Editor for the *William & Mary Law Review*.

My experiences throughout law school have enabled me to develop the research, writing, and analytical skills that will allow me to succeed as your clerk. As a judicial extern for U.S. District Judge Elizabeth W. Hanes, I compiled a summary of the dispositions of all compassionate release motions within the Fourth Circuit—analyzing the relevant factors affecting grants or denials. Additionally, through an internship with the Office of the Federal Public Defender, I had the opportunity to draft memoranda and motions, including objections to loss attribution in a conspiracy sentencing, a motion to suppress a warrantless search and seizure, and a memorandum on Fourth Amendment standing.

Furthermore, as a research assistant for Professor Allison Orr Larsen, I have cultivated a keen attention to detail and finetuned my ability to perform legal research on complex legal topics. In this role, I parsed through numerous lower court opinions to track the development of the Major Questions Doctrine and drafted memoranda synthesizing key takeaways and trends. Through this experience I have developed my capacity to communicate findings and summarize complex material succinctly and effectively as well as my ability to manage my own deadlines.

Enclosed for your consideration are my resume, law school transcript, writing sample, and recommendation letters from Professor Allison Orr Larsen, Professor Anna Perez Chason, and Andrew Grindrod, Esq. Thank you for your consideration. I would welcome the opportunity to further discuss my qualifications in an interview and I look forward to hearing from you.

Respectfully,
Rachel P. Clyburn

Enclosures

RACHEL CLYBURN

501 Promenade Lane | Williamsburg, Virginia 23185 | 843-718-6322 | rpcllyburn@wm.edu

EDUCATION**William & Mary Law School**, Williamsburg, Virginia

J.D. expected, May 2024

G.P.A.: 3.8, Class Rank: 4/175 (tied)

Honors: **William & Mary Law Review**, Notes Editor
 CALI Excellence for the Future Award (highest grade in Constitutional Law)
 Phi Delta Phi International Legal Honor Society

Activities: Institute for Bill of Rights Law Student Division, President
 Public Service Fund, Secretary
 American Constitution Society, Events Chair
 Election Law Society, State of Elections Blog Co-Editor, 2021-2022

Clemson University, Clemson Honors College, Clemson, South CarolinaB.A., *summa cum laude*, Sociology (major), Political Science and French (minors), May 2020

G.P.A.: 3.97

Honors: Phi Beta Kappa Honors Society
Honors Thesis: Gender Targeting in the 2016 and 2018 Congressional Elections

EXPERIENCE**Sullivan & Cromwell, LLP**, New York, New YorkSummer Associate

Summer 2023

Exact responsibilities to be determined.

Hon. Elizabeth Hanes, U.S. District Court, Eastern District of Virginia, Norfolk, VirginiaJudicial Extern

Spring 2023

Researched civil and criminal matters and wrote memoranda on issues including Fourth Circuit jurisprudence on compassionate release motions and removability under admiralty's saving to suitors clause. Observed court proceedings. Drafted summaries and initial impressions of filings to assist in preparation of hearings.

Professor Allison Larsen, William & Mary Law School, Williamsburg, VirginiaConstitutional Law Teaching Assistant

Spring 2023

Held weekly office hours for approximately seventy first-year students. Planned and executed several review sessions throughout the semester. Reviewed and provided feedback on midterm examinations.

Research Assistant

Summer 2022 to Spring 2023

Conducted legal research on the precedential power of historical sources in Supreme Court opinions as well as on the emergence of the Major Questions Doctrine and its path to becoming a "doctrine."

Federal Public Defender for the Eastern District of Virginia, Norfolk, VirginiaIntern

Summer 2022

Conducted research and wrote memoranda on issues including loss attribution for conspiracy sentencing and Fourth Amendment standing. Drafted a successful motion to suppress, met with clients, reviewed discovery, and observed various court proceedings. Participated in an attorney-led mock trial training course.

Charleston Area Service Collaborative, The Navigation Center, Charleston, South CarolinaAmeriCorps VISTA

August 2020 to August 2021

Created an employee manual for more than 100 in-house operations for volunteer training, staff on-boarding, and operational streamlining. Designed a case management database and merged data from more than 2,600 clients. Trained all staff members to track client services through said database. Engaged with clients and landlords to navigate eviction moratoriums, housing crises, and financial assistance applications.

Interests include Clemson football, musical theater, pub trivia, and NYT crosswords.



Unofficial Transcript

Note to Employers from the Office of Career Services regarding Grade Point Averages and Class Ranks:

- Transcripts report student GPAs to the nearest hundredth. **Official GPAs are rounded to the nearest tenth and class ranks are based on GPAs rounded to the nearest tenth.** We encourage employers to use official Law School GPAs rounded to the nearest tenth when evaluating grades.
- Students are ranked initially at the conclusion of one full year of legal study. Thereafter, they are ranked only at the conclusion of the fall and spring terms. William & Mary does not have pre-determined GPA cutoffs that correspond to specific ranks.
- Ranks can vary by semester and class, depending on a variety of factors including the distribution of grades within the curve established by the Law School. Students holding a GPA of 3.6 or higher will receive a numerical rank. All ranks of 3.5 and lower will be reflected as a percentage. The majority of the class will receive a percentage rather than individual class rank. In either case, it is likely that multiple students will share the same rank. Students with a numerical rank who share the same rank with other students are notified that they share this rank. Historically, students with a rounded cumulative GPA of 3.5 and above have usually received a percentage calculation that falls in the top 1/3 of a class.
- Please also note that transcripts may not look the same from student-to-student; some individuals may have used this Law School template to provide their grades, while others may have used a version from the College's online system.

Transcript Data						
STUDENT INFORMATION						
Name :	Rachel P. Clyburn					
Curriculum Information						
Current Program						
Juris Doctor						
College:	School of Law					
Major and Department:	Law, Law					
***Transcript type:WEB is NOT Official ***						
DEGREES AWARDED						
Applied:	Juris Doctor	Degree Date:				
Curriculum Information						
Primary Degree						
College:	School of Law					
Major:	Law					
	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Institution:	15.000	15.000	15.000	9.000	32.50	3.61

INSTITUTION CREDIT -Top-							
Term: Fall 2021							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	101	LW	Criminal Law	A-	4.000	14.80	
LAW	102	LW	Civil Procedure	A	4.000	16.00	
LAW	107	LW	Torts	A	4.000	16.00	
LAW	130	LW	Legal Research & Writing I	A-	2.000	7.40	
LAW	131	LW	Lawyering Skills I	H	1.000	0.00	
					Attempt Hours	Passed Hours	Earned Hours
					GPA Hours	Quality Points	GPA
Current Term:					15.000	15.000	15.000
Cumulative:					15.000	15.000	15.000
Unofficial Transcript							
Term: Spring 2022							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	108	LW	Property	A-	4.000	14.80	
LAW	109	LW	Constitutional Law	A	4.000	16.00	
LAW	110	LW	Contracts	A	4.000	16.00	
LAW	132	LW	Legal Research & Writing II	B+	2.000	6.60	
LAW	133	LW	Lawyering Skills II	H	2.000	0.00	
					Attempt Hours	Passed Hours	Earned Hours
					GPA Hours	Quality Points	GPA
Current Term:					16.000	16.000	16.000
Cumulative:					31.000	31.000	31.000
Unofficial Transcript							
Term: Fall 2022							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	115	LW	Professional Responsibility	A	2.000	8.00	
LAW	382	LW	Human Rights Law	A	3.000	12.00	
LAW	402	LW	Crim Pro II (Adjudication)	A	3.000	12.00	
LAW	453	LW	Administrative Law	A	3.000	12.00	
LAW	481	LW	Aca Freedom, Free Speech & Univ	P	1.000	0.00	
LAW	760	LW	Wm & Mary Law Review	P	1.000	0.00	
					Attempt Hours	Passed Hours	Earned Hours
					GPA Hours	Quality Points	GPA
Current Term:					13.000	13.000	13.000
Cumulative:					44.000	44.000	44.000
Unofficial Transcript							
Term: Spring 2023							
Subject	Course	Level	Title	Grade	Credit Hours	Quality Points	R
LAW	140D	LW	Adv Writing & Practice: Trans	B+	2.000	6.60	
LAW	309	LW	Evidence	A-	4.000	14.80	
LAW	412	LW	Legis/Statutory Interpretation	A-	3.000	11.10	
LAW	703	LW	Directed Reading	P	1.000	0.00	
LAW	754	LW	Judicial Externship	P	4.000	0.00	

PAGE 3 OF 3

RACHEL P. CLYBURN

LAW	760	LW	Wm & Mary Law Review		P		1.000	0.00	
				Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:				15.000	15.000	15.000	9.000	32.50	3.61
Cumulative:				59.000	59.000	59.000	48.000	184.10	3.83
Unofficial Transcript									
TRANSCRIPT TOTALS (LAW - FIRST PROFESSIONAL) -Top-									
				Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:				59.000	59.000	59.000	48.000	184.10	3.83
Total Transfer:				0.000	0.000	0.000	0.000	0.00	0.00
Overall:				59.000	59.000	59.000	48.000	184.10	3.83
Unofficial Transcript									
COURSES IN PROGRESS -Top-									
Term: Fall 2023									
Subject	Course	Level	Title					Credit Hours	
LAW	320	LW	Business Associations					4.000	
LAW	400	LW	First Amend-Free Speech & Pres					3.000	
LAW	410	LW	Conflicts of Laws					3.000	
LAW	500	LW	SCOTUS & Police Interrogations					1.000	
LAW	760	LW	Wm & Mary Law Review					2.000	
Unofficial Transcript									

Allison Orr Larsen

Associate Dean for Research and Faculty Development, Engh Research Professor, Alfred Wilson & Mary I.W. Lee Professor of Law, and Director, Institute of the Bill of Rights Law

William & Mary Law School

P.O. Box 8795
Williamsburg, VA 23187-8795

Phone: 757-221-7985

Email: amlarsen@wm.edu

May 31, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a law professor at William and Mary Law School and a 2L student here, Rachel Clyburn, has applied to be your law clerk. Rarely do I know a student as well as I know Rachel; she is my research assistant, my teaching assistant, and she has aced every class I have taught her. Rachel is perfect clerkship material. First in her class and on the law review, Rachel is the cream of the crop here at William & Mary.

I met Rachel her first year of law school. She was enrolled in my Constitutional Law class that year and she took my Administrative Law class the following fall (while a 2L). In both classes she earned an A – one of only a handful I awarded each semester. Her writing was crisp, her analysis was deep, and she spotted every issue I planted (and some excellent arguments I did not even anticipate). Indeed, the administrative law class she took as a 2L was full of 3Ls many of whom were at the top of their classes and on law review. Rachel was not intimidated and outperformed them all. She is an exceptionally bright law student, which explains why she was ranked first in the class after her first year of law school.

On top of (and perhaps more important than) Rachel's stellar grades, I have discovered over the past year that she is extraordinarily helpful as an employee. She was – by far – the best research assistant I hired over the summer 2022. Rachel helped me with a paper called *Becoming a Doctrine* that involves tracing the origin of old and new legal doctrines from their inception as legal ideas into adoption as “doctrine” by the Supreme Court. This was a monster project and it involved collecting origin stories for various older doctrines (standing, Chevron, political question doctrine) and comparing them to newer doctrines (like, for example, the major questions doctrine). I remember Rachel affirmatively asking – with a smile – whether she could tackle the political question doctrine because she was so curious about it. This is a sign of a good legal mind at work. What she handed in to me was so comprehensive I was able to cut and paste her sources directly into my article. It was extremely helpful.

I have learned over the years that grades are not the best indicator of success in hiring a research assistance. Rather, for me, it is the judgment to know what is helpful and what is not, and the diligence and care for detail to provide assistance that can be used long after they leave your employment. Rachel fits this description to the letter. She is not the sort of student who will write a 50-page memo for you that you have to concentrate to figure out later and ultimately disregard because it is too long. Rather she will concisely spot exactly what you need and provide it in a clear and organized fashion that you can use again and again as you return to the project.

I have witnessed this same helpfulness working with Rachel as a teaching assistant in my current Constitutional Law class. If I need something – anything – Rachel answers the call. Although this is an embarrassing story to share, at the beginning of the semester I could not figure out how to record an asynchronous lecture for the class and I asked Rachel to help. Within 2 hours she had gone through it herself and typed out step-by-step instructions for me to follow that were perfect. She is extremely responsive, very diligent, and great with both the big picture and the important details. In a nutshell, Rachel is the sort of assistant who spoils a professor. It is not hard to imagine her doing the same thing for you in chambers.

Finally, allow me to say a few words about Rachel's personality. Rachel does not talk to fill up a room with air – she is reserved, but an intellectual powerhouse. She is a delight once you get to know her, and her enthusiasm for and curiosity about learning new legal puzzles is infectious. I trust her completely and if I were you I would snap her up as a law clerk before someone else does.

Please let me know if you have any questions. The best way to reach me is probably over e-mail or by my cell phone, (434) 249-1104.

Sincerely,

/s/

Allison Orr Larsen - amlarsen@wm.edu - (757) 221-7985

Allison Orr Larsen

Allison Orr Larsen - amlarsen@wm.edu - (757) 221-7985

Anna Perez Chason
Professor of the Practice

William & Mary Law School
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Williamsburg, VA 23187-8795

Phone: 757-509-0076
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May 31, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am pleased to give you my most enthusiastic recommendation for Rachel Clyburn. Rachel was a standout student in my Legal Research and Writing class last year. She is one of the most professional and personable students I have ever had the pleasure to teach. Legal Research and Writing is a small-group class intensely focused on writing; therefore, I have come to know Rachel through her classroom interactions and her written work. In the classroom, Rachel excelled. Her written work was outstanding. Outside the classroom, I know Rachel through our many conferences as each student has at least seven conferences with me. Rachel has an outstanding work ethic coupled with a keen intellect. As a result, she is ranked first in her class.

Rachel is a gifted writer. In my class last year, she wrote two ten-page objective legal memoranda, two ten-page persuasive briefs, and several short assignments. Her writing was clear and logical. She researched the issues thoroughly and analyzed them carefully and correctly. She adapted her writing style to both the legal question and the audience. I have no doubt that she will work diligently to conquer any writing challenge. In class sessions, she was always prepared, and willingly helped others with their group work. Rachel was a natural leader in her section and was well-liked and respected by her peers.

Rachel's professionalism matched or exceeded those of the best lawyers I worked with in practice. She earned one of the highest possible professionalism scores. Her professionalism score was based on many factors, including class attendance and timeliness, class preparation, participation in class discussions, ability to work with others, timeliness in submitting assignments, and preparation for conferences. Her professionalism was so remarkable that other professors mentioned it to me.

Rachel was prepared for each writing conference with a polished draft and insightful questions. However, what really impressed me about Rachel is that she took what little direction I had to give well. William and Mary's strict curve severely constrains the number of A grades that I can give each semester, and Rachel was in one of the strongest sections I have ever taught. Given her intelligence and work ethic, I was not surprised when Rachel earned a coveted spot on the William & Mary Law Review. She is currently the Notes Editor.

Although her work on the William & Mary Law Review keeps her busy, Rachel is also the Events Chair for the American Constitution Society. She serves the community as the Secretary for the school's Public Service Fund, which raises money for public service fellowships. In addition, this semester she is serving as a teaching assistant for Constitutional Law.

Although I am now a professor, I spent several years in practice and worked with many summer associates and new associates, all with superb credentials. In my opinion, Rachel would have been at the absolute top of that group. She will be a true credit to the profession, and once she is admitted to the bar, I would gladly hire her as my personal lawyer or associate. I strongly recommend her to you and would be delighted to answer any questions you may have.

Sincerely,

/s/

Anna Perez Chason

Anna Perez Chason - apchason@wm.edu - 757-509-0076

FEDERAL PUBLIC DEFENDER

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Jeremy C. Kamens
Federal Public Defender

Andrew W. Grindrod
Assistant Federal Public Defender

June 12, 2023

VIA ELECTRONIC SUBMISSION

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to enthusiastically recommend Rachel Clyburn for a clerkship in your chambers. She has the legal acumen, judgment, and friendly demeanor that will make her an asset to any legal office lucky enough to have her. Plus, between her work with my office and her externship with Judge Hanes, Rachel gained familiarity with Norfolk's federal courthouse so she could hit the ground running so to speak.

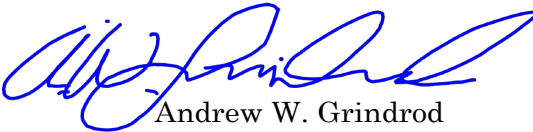
Rachel spent the summer after her first year in law school at the Office of the Federal Public Defender in Norfolk under my direct supervision. You can see from her résumé that Rachel—who is fourth in her class—holds outstanding academic credentials. I can tell you that those classroom accomplishments translate into applied skills. Her research, analysis, and writing were the best I've seen from a law student in my ten years of practice. Her first drafts were excellent. Just as important, Rachel took feedback well. When I offered specific line edits to match my tone and style, Rachel remembered them for the next project. She was also able to understand and implement feedback delivered at a higher level of generality. For example, Rachel drafted a motion to suppress (that we later won). When we met to discuss the draft, I said I thought we needed to flesh out one argument more. She took that general direction and gave me back an updated draft with exactly what we needed. She didn't require handholding and didn't need me to get into the weeds with her. She understood why I wanted more in that section and what we were trying to accomplish; then she executed. It was very impressive work, especially from a 1L. That suppression motion was not an isolated instance of excellence. Over the course of the summer, I trusted Rachel with more complex briefing (including some particularly nuanced arguments about Guidelines loss calculation). Rachel was up to the task every time. Without a doubt, her academic success will translate well into actual legal work.

Rachel's research and writing impressed me, but her judgment earned my trust. I put her in meetings with my legal team, clients, and prosecutors; I took her into courtrooms and jails. Rachel always read the room well and acted like a seasoned professional. She knew when to speak and when to listen. She was confident and engaged. Toward the end of the summer, a client for whom Rachel and I had been working needed someone to see him at the jail right away, and I couldn't go. I sent Rachel. She is the only intern I have ever trusted to meet a client without me. She will likely be the last. But Rachel was able to triage the situation and report back with an update.

Finally, Rachel Clyburn is simply a nice person. Legal work is stressful, emotionally demanding, and physically exhausting. It's good to have a smart, skilled attorney on your team. Yet it has been my experience that the smartest people aren't always the nicest or easiest to work with. Thankfully, Rachel was a gem. She got along with everyone in our office (staff, attorneys of all ages and backgrounds, clients, etc.). She attended after-work happy hours, fit in well with the attorneys chatting at group lunches, and generally made the summer enjoyable. After she left, multiple clients asked about how she was doing in school and sent their regards to Rachel through me. Rachel Clyburn was an excellent addition to our office for a summer and she would be an excellent addition to your chambers. She has my strong recommendation.

Please do not hesitate to call or email if you have any questions.

Sincerely,



Andrew W. Grindrod

Rachel Clyburn

501 Promenade Lane | Williamsburg, Virginia 23185
843-718-6322 | rpclyburn@wm.edu

WRITING SAMPLE

I prepared this motion to suppress during my summer internship with the Office of the Federal Public Defender for the Eastern District of Virginia and have obtained the employer's consent to use it as a writing sample. This was my initial draft of the motion and is substantially my own work. All names have been changed and pictures have been removed to preserve anonymity. The motion has been pared down for brevity and includes only the statement of facts and argument sections. I am happy to provide the full document upon request.

STATEMENT OF FACTS

At 12:25PM on April 26, 2022, Donna Moss placed a 911 call advising that Mr. Joshua Lyman was currently driving her 2013 Nissan Rogue. Moss informed the operator that Mr. Lyman had a number of outstanding warrants and alleged that he had weapons and drugs in the vehicle. About three minutes later, the first officer was dispatched pursuant to the call and West Wing Police Division officers located the vehicle in the Autozone parking lot at [address redacted]. Multiple officers from the West Wing Police Division responded to the scene where they waited for the vehicle's driver to exit the store. A little after 1:00PM, Mr. Lyman exited the store, opened the car door, and sat in the driver's seat. At this point, Officers Bartlet, McGarry, Ziegler, and Cregg quickly approached from all angles, converged on Mr. Lyman, and asked him to show his hands and step out of the vehicle.

Mr. Lyman complied with all of the officers' commands and stepped out of the vehicle, at which point he was handcuffed by Officers Cregg and McGarry. Around this time, Officer Ziegler informed Mr. Lyman: "You've got some paperwork on file." After Mr. Lyman was handcuffed, Officer Cregg walked him to a patrol car to be searched and then placed inside of the cruiser, where he was detained pursuant to outstanding failure to appear warrants. Meanwhile, Officer Ziegler pointed at both Officer McGarry and Officer Bartlet and directed, "We saw him in the vehicle, search incident to arrest." At the time of this direction, Officers McGarry and Bartlet remained standing at a distance from the car and had not yet looked into the car at close proximity or begun searching. Officer Seaborn's body camera captured the scene at the time of the direction and the screenshot on the left shows Officer McGarry and Officer Bartlet's position

in relation to the car. The screenshot on the right shows Officer McGarry's view of Officer Ziegler directing the search as well as his vantage point in relation to the car.¹

Officer McGarry at that point immediately turned towards the driver's side door and began to put on gloves, while Officer Bartlet walked to the passenger side door, opened it, and began to search. While Officer Bartlet and Officer McGarry searched the passenger and driver's doors respectively, they engaged in ongoing conversation and Officer Bartlet told Officer McGarry that he found a scale in the door. When McGarry inquired about an object on the passenger seat, Bartlet informed him that it was some sort of smoking device. The officers continued in their methodical search and Officer McGarry after finishing with his search of the door put his hands on the driver's seat and leaned into the car. Upon entering the threshold of the car, he announced that there was a smoking device and "some kind of crystal stuff" on the center console. This was the first instance in which any party appears to take note of the purported drugs. The screenshots below show Officer McGarry leaning into the vehicle to obtain a view of the center console and its contents.²

Officer McGarry later photographed the objects in the center console from above. That photograph is shown below in contrast to a screenshot of Officer McGarry's view prior to beginning the search of the vehicle or exceeding the threshold of the vehicle. As can be seen by comparing the two views, the smoking device and any substance in the ashtray appear to be obscured from view by the receipt and edges of the ashtray in the exterior view.³

¹ The screenshot on the left is from Ex. 1 (Seaborn body camera footage). The screenshot on the right is from Ex. 2 (McGarry body camera footage). All screenshots display the timestamp in the upper right-hand corner.

² Ex. 3 (Bartlet body camera footage).

³ Ex. 2 (McGarry body camera footage).

After Officer McGarry took note of the objects in the center console, Officer Ziegler returned to the doorway area and Officer McGarry relayed his findings thus far to him, mentioning only the smoking device and crystals located. Officer McGarry then returned to his methodical search, announcing the discovery of a knife in the driver's seat area. Following this announcement, Officer McGarry took out a flashlight, leaned into the car to shine the light into the crevice of the front seat, and then announced that he had found a firearm in the seat crevice. This is the first mention of any firearm, and the announcement follows Officers McGarry and Bartlet's methodical detailing of their findings in the order that they discovered them. Officers McGarry and Bartlet continued their search of the vehicle in the same manner, eventually concluding the search and seizing a number of items from the car. At the conclusion of the search, Officer Bartlet entered the store and informed the manager that "[b]ecause his vehicle's on private property, we don't tow it." Mr. Lyman was eventually arrested and then participated in a custodial interrogation with ATF agents. During this interrogation, Mr. Lyman made a number of incriminating statements when confronted with the evidence gathered from the search of the car.

Mr. Lyman faces one count of possession of a firearm in furtherance of drug trafficking in violation of 18 U.S.C. § 924(c) and one count of possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 846(a)(1).

LAW AND ARGUMENT

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. CONST. amend. IV.

I. MR. LYMAN POSSESSED A FOURTH AMENDMENT INTEREST IN THE SEARCHED CAR.

To demonstrate that a Fourth Amendment violation has occurred, Mr. Lyman must first establish standing for such a claim by showing that he had a “legitimate expectation of privacy in the premises’ searched.” *Byrd v. United States*, 138 S. Ct. 1518, 1526 (2018) (quoting *Rakas v. Illinois*, 439 U.S. 128, 133 (1978)). Two tests for analyzing whether one has a legitimate expectation of privacy exist: the “*Katz* reasonable expectation of privacy” test and the “common-law trespassory test.” *United States v. Jones*, 565 U.S. 400, 409 (2012). To establish a legitimate expectation of privacy, either test may be employed. *Id.* Mr. Lyman demonstrates a legitimate expectation of privacy under both.

As the driver of the searched car, Mr. Lyman possessed the reasonable expectation of privacy “that comes from lawful possession and control and the attendant right to exclude.” *Byrd*, 138 S. Ct. at 1529. Additionally, Mr. Lyman met the specifications of the common-law trespassory test as well given his bailee status. *See Jones*, 565 U.S. at 404 n. 2 (indicating that although the searched vehicle was registered to Jones’s wife, Jones “had at least the property rights of a bailee”). Thus, Mr. Lyman possessed the legitimate expectation of privacy in the searched vehicle necessary to effectuate standing for a Fourth Amendment claim.

II. THE POLICE ENGAGED IN A WARRANTLESS SEARCH OF MR. LYMAN’S CAR IN VIOLATION OF THE FOURTH AMENDMENT.

Warrantless searches “are per se unreasonable under the Fourth Amendment—subject to only a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967). The exception invoked in this case is the search incident to a lawful arrest

exception, which derived from interests in officer safety and evidence preservation. *See United States v. Robinson*, 414 U.S. 218, 230-34 (1973). This justification for the search of Mr. Lyman's car was first given immediately following Mr. Lyman's detention when Officer Ziegler pointed at Officers McGarry and Bartlet and directed: "search incident to arrest." It was again outlined in Officer Bartlet's Case Supplemental Report where he detailed that after Mr. Lyman's arrest "a search incident to arrest on his vehicle was conducted."⁴ Additionally, the justification of a "search incident to arrest" was given by Officer McGarry on both West Wing Police Division Firearms Recovery Forms in the field "description under which the firearm came into possession of the law enforcement agency."⁵ At the moment that Officer McGarry began inspecting objects in the driver's side door of Mr. Lyman's car, a warrantless search was effectuated. *See Arizona v. Hicks*, 480 U.S. 321, 325 (1987) (noting that an officer moving equipment and taking action to expose concealed contents constituted a search for Fourth Amendment purposes). "The government bears the burden of proof in justifying a warrantless search or seizure." *United States v. McGee*, 736 F.3d 263, 269 (4th Cir. 2013) (citing *Welsh v. Wisconsin*, 466 U.S. 740, 749-50 (1984)).

a. The Search Incident to Arrest was unreasonable in violation of the Fourth Amendment.

Any search incident to arrest of Mr. Lyman's car was unreasonable as it was not necessitated by either concerns over officer safety or evidence preservation. In *Arizona v. Gant*, the Supreme Court examined the search incident to a lawful arrest exception to warrantless searches and delineated the applicable rule for this case: "Police may search the passenger compartment of a

⁴ Ex. 4.

⁵ Ex. 5.

vehicle incident to a recent occupant's arrest *only* if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest." 556 U.S. 332, 334 (2009) (emphasis added). In *Gant*, the Supreme Court held that because Gant was immediately handcuffed and secured prior to the search and was originally being arrested for an outstanding warrant for driving with a suspended license, the "police could not reasonably have believed either that Gant could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein." *Id.* at 344. Thus, the search of Gant's car was unreasonable and violated the Fourth Amendment. *Id.* Here, as in *Gant*, the search incident to arrest failed to meet any justifications for officer safety and evidence preservation and was therefore unreasonable and in violation of the Fourth Amendment. *See id.*

i. There were no concerns for officer safety justifying a search incident to arrest.

In *Gant*, the Supreme Court explained that police were authorized to search a vehicle incident to arrest "only when arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." *Id.* at 343. As Gant was immediately handcuffed upon officer's approach and was secured prior to the start of the search, no concerns for officer safety necessitated a search incident to arrest. *Id.* Similarly, here, Mr. Lyman was placed in handcuffs and walked by Officer Cregg away from his vehicle and into the custody of another officer prior to the search commencing. Just as in *Gant*, no outstanding concerns for officer safety prevailed, as there was no possibility that Mr. Lyman "could reach into the area that law enforcement officers [sought] to search." *Id.* at 339; *see also, United States v. Davis*, 997 F.3d 191, 202 (4th Cir. 2021) (highlighting the unreasonableness of a search incident to arrest where "nothing in the

record suggest[ed] that Davis was not secured or that he was anywhere near his vehicle at the time of its search”). In the absence of any concerns for officer safety, the government would be required to demonstrate a need for the preservation of evidence to justify a search incident to arrest.

- i. There were no concerns for preservation of evidence “of the offense for which [Mr. Lyman] was arrested” justifying a search incident to arrest.*

The Supreme Court in *Gant* further explained that to meet the evidence preservation justification under the *Chimel* rationale, police must have a reasonable belief “that the vehicle contains evidence *of the offense of arrest*.” 556 U.S. at 334 (emphasis added). Officers originally initiated Gant’s arrest for an outstanding warrant for driving with a suspended license—given that no evidence of this outstanding warrant likely existed in the searched car, the Court noted that “police could not reasonably have believed . . . that evidence of the offense for which he was arrested might have been found” pursuant to their search, and thus the search was unreasonable. *Id.* at 344. Similarly, in *Davis*, the Fourth Circuit noted that given Davis’s arrest for several traffic violations: “[i]t certainly was not reasonable to believe that Davis’s vehicle contained evidence of any of those crimes.” 997 F.3d at 202; *see also United States v. Meggison*, No. 07-4149, 2009 WL 2461856 at *1 (4th Cir. Aug. 12, 2009) (noting that there was no justification for an officer to have reason to believe that the vehicle had evidence of the underlying domestic abuse offense precipitating the stop and thus “offers were required to obtain a warrant”); *United States v. Beene*, 818 F.3d 157, 161-62 (5th Cir. 2016) (finding that defendant’s crime of resisting arrest precluded discovery of evidence in his vehicle); *United States v. Lopez*, 567 F.3d 755, 758 (6th Cir. 2009) (holding that a warrantless search was

unreasonable given the lack of likelihood that officers would find evidence of defendant's reckless driving offense while searching the vehicle).

In this case, Mr. Lyman was stopped and detained pursuant to outstanding warrants—just as *Gant* was. *See Gant*, 556 U.S. at 344. As in *Gant*, there was no reason for officers to believe that evidence of Mr. Lyman's outstanding failure to appear warrants would be present in the searched car. *See id.*; *see also Davis*, 997 F.3d at 202 (“It certainly was not reasonable to believe that Davis's vehicle contained evidence of [traffic violations]”). Thus, in the absence of any justification for officer safety, the search was unreasonable under the search incident to arrest framework. Given that “police could not reasonably have believed either that” Mr. Lyman “could have accessed his car at the time of the search” as he was handcuffed and standing in the custody of other officers, “or that evidence of” his outstanding failure to appear warrants “might have been found therein, the search in the case was unreasonable.” *Gant*, 556 U.S. at 344.

b. The plain view doctrine is inapplicable to the search of Mr. Lyman's car as items were not detected prior to Officer McGarry commencing the unjustified search and “crossing the plane of the vehicle.”

Several investigatory documents suggest that various items were in plain sight in the vehicle upon Mr. Lyman's detention.⁶ However, the footage from the scene makes clear that the search was conducted as a search incident to arrest prior to officers seeing any incriminating items in

⁶ Ex. 5 (McGarry Case Supplemental Report: “I immediately observe, in plain sight, the pistol grip of a handgun containing an extended magazine concealed between the driver's seat and the center console . . . Also in plain sight, is a glass dish containing crystalline rocks that in my training and experience I identify as methamphetamine and a smoking device. Additional methamphetamine can be seen in plain sight strewn on the center console.”); Ex. 6 (Incident Report Related Property List: listing glass dish with methamphetamine and smoking device as “in plain view”).

the searched car and that objects were not visible without intrusion into the vehicle. Officer Ziegler directed Officers Bartlet and McGarry to search the car “incident to arrest” while both officers remained standing a couple of feet away from the vehicle’s open door. Additionally, upon beginning the search of the vehicle, Officer McGarry made no indication that he immediately spotted a firearm or incriminating items on the center console. Instead, he began by searching the door and he and Officer Bartlet catalogued objects aloud as they discovered them. It is only after Officer McGarry completed his search of the door that he placed his hands on the driver’s seat, leaned into the vehicle, and initially identified the smoking device and “some kind of crystal stuff” on the center console. Following this discovery, Officer McGarry returned to his methodical search and announced a knife located in the driver’s seat area. Only once Officer McGarry catalogued the knife aloud did he take out a flashlight, shine it in the crevice of the front seat, peer into the crevice, and state that he found a firearm. In contrast to Officer McGarry’s assertion that he “immediately observe[d], in plain sight” this firearm, this is the first time that he mentioned any firearm and the footage shows that he needed to lean into the threshold of the vehicle and move the seat belt buckle to identify it.⁷

The Supreme Court enunciated the rule on the plain view doctrine in *Texas v. Brown*, holding that said doctrine permits warrantless seizure when: (1) the police officer lawfully makes an initial intrusion or is properly in a position to view the area in question, (2) the officer inadvertently discovers evidence, and (3) it is immediately apparent that objects “may be evidence of a crime, contraband, or otherwise subject to seizure.” 460 U.S. 730, 736 (1983) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 465-70 (1971)); see also *United States v.*

⁷ Ex. 2.

Jackson, 131 F.3d 1105, 1109 (4th Cir. 1997) (citing *Horton v. California*, 496 U.S. 128, 136-37 (1990)) (outlining the same tripartite requirements for plain view doctrine).

Here, footage demonstrates that Officer McGarry did not discover incriminating evidence until the unconstitutional search was already underway, thus precluding lawful intrusion or view. *See Brown*, 460 U.S. at 736. Officer McGarry only discovered the items on the center console and the firearm in the seat crevice after completing his search of the doorway and leaning into the vehicle. In *Horton v. California*, the Supreme Court emphasized that it is “an essential predicate to any valid warrantless seizure of incriminating evidence that the officer did not violate the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed.” 496 U.S. 128, 136 (1990) (quoting *Coolidge*, 403 U.S. at 466 (1971)). The Fourth Circuit has extrapolated on this predicate by explaining that “crossing the plane of the vehicle” would exceed the boundaries of the plain view doctrine. *United States v. Stanfield*, 109 F.3d 976, 981 (4th Cir. 1997).

Screenshots of footage from Officers McGarry and Bartlet’s body cameras included above in the Statement of Facts demonstrate that Officer McGarry “violate[d] the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed.” *Horton*, 496 U.S. at 136. It is only after the start of the unconstitutional search of the door that Officer McGarry “crossed the plane of the vehicle,” placed his hands on the driver’s seat, and announced the discovery of items on the center console. *Stanfield*, 109 F.3d at 981. Similarly, his announcement of the discovery of the firearm follows the beginning of the unlawful intrusion into Mr. Lyman’s car and again necessitates the crossing of the threshold of the doorway. *See id.* Given that this discovery thus fails the requirements for plain view doctrine set forth in *Brown*

and coupled with the failure of any search incident to arrest justification, the warrantless search of Mr. Lyman's car violated the Fourth Amendment.

As the burden rests with the government to establish an exception to the warrant requirement and the two suggested by initial investigatory documents have been disputed above, the defense will not attempt to formulate and disprove every potential argument. *See McGee*, 736 F.3d at 269. In the absence of the government proving the applicability of some other exception to the warrant requirement, the search of Mr. Lyman's vehicle violated the Fourth Amendment.

III. ALL FRUITS OF THE FOURTH AMENDMENT VIOLATION MUST BE SUPPRESSED.

Following an initial stop and detention for outstanding failure to appear warrants, the unconstitutional search of Mr. Lyman's car precipitated the entire case at hand. The physical evidence uncovered pursuant to the search Mr. Lyman faces was procured in violation of the Fourth Amendment as there was no exception to the warrant requirement. Additionally, ATF agent's questioning of Mr. Lyman following his arrest and his subsequent incriminating statements directly resulted from the same unconstitutional search. Given that their emergence was the result of an unconstitutional search of Mr. Lyman's car, all physical evidence gathered from this search and all incriminating statements made during the subsequent custodial interrogation must be suppressed. *See generally Hayes v. Florida*, 470 U.S. 811, 814 (1985) (holding that evidence obtained via defendant's unconstitutional arrest must be suppressed as fruit of the poisonous tree).

Applicant Details

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 Middle Initial **W**
 Last Name **Coffey**
 Citizenship Status **U. S. Citizen**
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Address

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Applicant Education

BA/BS From **Texas Tech University**
 Date of BA/BS **May 2019**
 JD/LLB From **Texas Tech University School of Law**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=74408&yr=2011
 Date of JD/LLB **May 14, 2022**
 Class Rank **5%**
 Law Review/Journal **Yes**
 Journal(s) **Texas Bank Lawyer**
Journal of Biosecurity, Biosafety & Biodefense
 Moot Court Experience **Yes**
 Moot Court Name(s) **Texas Tech University Board of Barristers**
Appellate Lawyers Association 2020 National Moot Court Competition

Bar Admission

Admission(s) **Texas**

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **Yes**
Clerk

Specialized Work Experience

Specialized Work **Bankruptcy, Patent**
Experience

Recommenders

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Grant Coffey

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March 23, 2023

The Honorable Jamar K. Walker
United States District Court
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I seek a position as a law clerk for the term beginning in August of 2024. Clerking in your chambers is particularly appealing to me because of your experience prosecuting white collar crimes, and I want to clerk for an Article III judge.

Diversity is an important consideration for law clerk hiring. On its face, a white man from West Texas does not appear to be a diverse addition to any team. But I bring cultural awareness stemming from my experiences as a West Texan based on the people—from farm hands to foreign academics—I have met and worked with. My unique perspective was influenced by (1) my mother, a social worker, and my father, a nurse, (2) my partner who worked at a domestic violence shelter, (3) my experience in agriculture, and (4) the years I worked closely and successfully with people having different viewpoints.

Beyond my perspective, my ability to excel in the legal field is shown by my rank in the top 5% of Texas Tech University School of Law, which I achieved while receiving my M.S. in Biotechnology with a 4.0 GPA. Subsequently, I gained experience as the law clerk for the Honorable Robert L. Jones in the United States Bankruptcy Court for the Northern District of Texas. Beyond bankruptcy, I have experience with property, intellectual property, and antitrust law.

Shifting from my legal and academic qualifications to my personal qualities, I am adventurous and scholarly. Together these qualities create a love of learning. This love of learning has fostered itself in many of my hobbies—caring for bees, plants, corals, and dogs; reading; baking breads; hiking; and repairing cars. One reason I love the law, and clerking, is that I am always learning. This positive attitude and willingness to learn sets me apart and makes me fun to work with.

Above, I attribute my experiences in Lubbock, Texas to my unique outlook, and you might wonder why I am interested in leaving. After spending 26 years in Lubbock, it is time to move to the next chapter and Virginia would be an exciting place to begin.

Thank you for your time and consideration.

Respectfully,



Grant Coffey

Grant Coffey

3205 42nd Street
Lubbock, Texas 79413

806.317.4408
grant_coffey@txnb.uscourts.gov

LICENSE

Licensed by State Bar of Texas

November 2022

EDUCATION

Texas Tech University School of Law, Lubbock, Texas

Doctor of Jurisprudence/Master of Science in Biotechnology May 2022

Rank 6 out of 126 – Law GPA 3.83, summa cum laude, Order of the Coif

Dual degree program – graduate GPA 4.0

Top Grade in Patent Law, Trademarks and Unfair Competition, Wills and Trusts, Criminal Law, and Texas Marital Property

Distinction award in Commercial Law, Business Entities, Introduction to Intellectual Property, Constitutional Law, and Legal Practice II

Selected for the ABA Judicial Clerkship Program

Tutor for Property Spring 2021, and Spring 2022; Teaching Assistant for Wills and Trusts

Journal of Biosecurity, Biosafety, & Biodefense Law, Associate Editor

Texas Bank Lawyer, Contributing Writer and Editorial Board Member

National Moot Court Team Brief Writer

Texas Tech University, Lubbock, Texas

Bachelor of Science in Plant and Soil Science – GPA 3.341, Dean's List

May 2019

EXPERIENCE

Law Clerk to the Honorable Robert L. Jones, Lubbock, Texas

August 2022 – August 2023

U.S. Bankruptcy Court, Northern District of Texas

Draft opinions and memoranda; conduct legal research; attend trials and hearings

Texas Office of the Attorney General, Summer Clerk, Austin, Texas

July 2021 – August 2021

Clerked with the antitrust division; assisted in complex litigation

Conducted legal research; drafted memoranda; and participated in document review (Everlaw)

Myers Bigel, Summer Associate, Raleigh, North Carolina

May 2021 – July 2021

Drafted responses to Patent and Trademark Office actions, claim amendments, and client correspondence

Office of Research Commercialization, Texas Tech University, Lubbock, Texas

May 2020 – May 2021

Assessed patentability, market practicality, and regulatory hurdles facing new technologies

Lubbock Impact—volunteer organization, Lubbock, Texas

Fall 2019 – Spring 2020

Tutored disadvantaged children, ages 6 through 15

Americot—cotton seed company, Lubbock, Texas

May 2019 – May 2021

Juggled law school with extracurricular work

BASF/Bayer—trait introgression greenhouse, Lubbock, Texas

October 2017 – May 2019

Maintained close communications with direct supervisors

ACTIVITIES AND INTERESTS

bee keeping, reading, gardening, powerlifting, backpacking/hiking, rafting, soccer, music

TEXAS TECH UNIVERSITY SCHOOL OF LAW

Grant William Coffey

Course Level: Law

Current Program

Doctor of Jurisprudence

Program : Law JD

College : School of Law

Campus : Lubbock TTU

Major : Law

Comments:

Rank 41 out of 145 as of 1/7/20

Rank 25 out of 138 as of 6/2/20

Rank 9 out of 131 as of 1/7/21

Rank 7 out of 133 as of 6/1/2021

Rank 7 out of 127 as of 01/04/2022

Final Rank 6 out of 126 as of 05/26/2022

Awarded Degree Doctor of Jurisprudence 14-MAY-2022

Primary Degree

Program : Law JD

College : School of Law

Campus : Lubbock TTU

Major : Law

Inst. Honors: Summa Cum Laude

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R	Ehrs:	GPA-Hrs:	QPts:	GPA:
----------	--------------	----------	-------	-------	----------	-------	------

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

ENROLLED TTU

Texas Tech University

BTEC 5301	Intro to Biotechnology	3.00	TZ
BTEC 5322	Bioinformatics Methods	3.00	TZ
CHEM 5330	Biochemistry I	3.00	TZ
CHEM 5332	Biochemistry III	3.00	TZ
Ehrs: 12.00	GPA-Hrs: 0.00	QPts: 0.00	GPA: 0.00

INSTITUTION CREDIT:

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
----------	--------------	----------	-------

Institution Information continued:

Fall 2019 Law

LAW 5306	Legal Practice I	3.00	B 9.00
LAW 5402	Contracts	4.00	B 12.00
LAW 5404	Torts	4.00	B 12.00
LAW 5405	Civil Procedure	4.00	A 16.00
LAW 6108	Intro. to the Study of Law	1.00	A 4.00

Ehrs: 16.00 GPA-Hrs: 16.00 QPts: 53.00 GPA: 3.31

Spring 2020 Law

LAW 5307	Legal Practice II	3.00	A 12.00
LAW 5310	Criminal Law	3.00	A 12.00
LAW 5401	Constitutional Law	4.00	A 16.00
LAW 5403	Property	4.00	A 16.00

Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 56.00 GPA: 4.00

Summer 2020 Law

LAW 6276	Products Liability	2.00	A 8.00
LAW 6357	Professional Responsibility	3.00	A 12.00

Ehrs: 5.00 GPA-Hrs: 5.00 QPts: 20.00 GPA: 4.00

Fall 2020 Law

Participated in The Journal of Biosecurity

LAW 6039	Intro to Intellectual Property	3.00	A 12.00
LAW 6319	Intro Emerging Technologies Lw	3.00	A 12.00
LAW 6339	Criminal Procedure	3.00	A 12.00
LAW 6434	Income Taxation	4.00	A 16.00

***** CONTINUED ON PAGE 2 *****

Grant Coffey
grant.coffey@ttu.edu



Page: 1

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Janessa Walle

OFFICE OF THE REGISTRAR - LUBBOCK, TEXAS 79409

ASSISTANT DEAN OF ACADEMIC SERVICES AND REGISTRAR

3 digit course numbers changed to 4 digit numbers effective September 1983
Texas Technological College changed to Texas Tech University September 1, 1969

OFFICIAL CERTIFICATIONS BEAR REGISTRAR'S SIGNATURE WITH UNIVERSITY SEAL

TEXAS TECH UNIVERSITY SCHOOL OF LAW

Grant William Coffey

SUBJ NO.	COURSE TITLE	CRED GRD	PTS R	SUBJ NO.	COURSE TITLE	CRED GRD	PTS R
Institution Information continued:				Institution Information continued:			
Ehrs: 13.00 GPA-Hrs: 13.00 QPts: 52.00 GPA: 4.00				Spring 2022 Law			
				LAW 6050	Patent Law	3.00 A	12.00
				LAW 6416	Evidence	4.00 A	16.00
				LAW 6435	Business Entities	4.00 A	16.00
				LAW 7005	Texas Bank Lawyer	1.00 CR	0.00
				LAW 7101	Journal of Biosecurity	1.00 CR	0.00
Spring 2021 Law				Ehrs: 13.00 GPA-Hrs: 11.00 QPts: 44.00 GPA: 4.00			
Participated in the Texas Bank Lawyer Journal				***** TRANSCRIPT TOTALS *****			
LAW 6034	Trademarks Unfair Competition	2.00 A	8.00	Earned Hrs GPA Hrs Points GPA			
LAW 6040	Law and Science Legal Research	2.00 A	8.00	TOTAL INSTITUTION 84.00 80.00 307.00 3.83			
LAW 6415	Wills and Trusts	4.00 A	16.00	TOTAL TRANSFER 12.00 0.00 0.00 0.00			
LAW 6420	Commercial Law	4.00 A	16.00	OVERALL 96.00 80.00 307.00 3.83			
LAW 7101	Journal of Biosecurity	1.00 CR	0.00	***** END OF TRANSCRIPT *****			
Ehrs: 13.00 GPA-Hrs: 12.00 QPts: 48.00 GPA: 4.00							
Summer 2021 Law							
LAW 6008	Texas Marital Property	2.00 A	8.00				
Ehrs: 2.00 GPA-Hrs: 2.00 QPts: 8.00 GPA: 4.00							
Fall 2021 Law							
LAW 6057	Vineyard and Winery Law	3.00 A	12.00				
LAW 6222	Law Practice Technology	2.00 A	8.00				
LAW 6249	Crimes in IP & Info. Law	2.00 B	6.00				
LAW 7101	Journal of Biosecurity	1.00 CR	0.00				
Ehrs: 8.00 GPA-Hrs: 7.00 QPts: 26.00 GPA: 3.71							
***** CONTINUED ON NEXT COLUMN *****							

Page: 2

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TEXAS TECH UNIVERSITY

Office of the Registrar, Lubbock, Texas 79409

Grant William Coffey
644542566 07/31/1996

Course Level: Undergraduate - TTU

TSI Information:

TSI AREA TSI STATUS EXPLANATION
All Exempt Exemption - SAT Scores

CORE CURRICULUM COMPLETED

TEC 51.907 Undergraduate Course Drop Counter - 0

Awarded Degree Bachelor of Science 18-MAY-2019

Program : Plant and Soil Science BS

College : Coll of Ag Sci and Natl Res

Major : Plant & Soil Science

Maj/Concentration : Environment Soil Water Science

SUBJ NO.	COURSE TITLE	CREDGRD	PTS	R	C
----------	--------------	---------	-----	---	---

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

Prior to TTU	Colorado Mt Coll	Glenwood Spgs	AHRS	EHRS	QHRS	QPTS	GPA
Cumulative	0.00	29.00	29.00	107.000	3.689		

INSTITUTION CREDIT:

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CREDGRD	PTS	R	C
----------	--------------	---------	-----	---	---

Institution Information continued:

Fall 2015 TTU

CHEM 1307	Principles Of Chemistry I	3.000	B+	9.000	030
HIST 2300	Hist Of U.S. To 1877	3.000	A-	12.00	060
MUHL 2304	History of Jazz	3.000	A	12.00	050
PSS 1100	Freshman&Transfer Student Sem	1.000	A	4.000	
PSS 1321	Agro Plant Science	3.000	A-	12.00	090

	AHRS	EHRS	QHRS	QPTS	GPA
Current	13.000	13.000	13.000	49.000	3.769
Cumulative	13.000	13.000	13.000	49.000	3.769

Deans List

Spring 2016 TTU

ACOM 2302	Scientific Comm In AG & Nat Rs	3.000	B	9.000	
BIOL 1401	Biology Of Plants	4.000	A	16.00	030 031
HIST 2301	Hist Of U.S. Since 1877	3.000	B	9.000	060
POLS 1301	American Government, Organization	3.000	B	9.000	070

	AHRS	EHRS	QHRS	QPTS	GPA
Current	13.000	13.000	13.000	43.000	3.307
Cumulative	26.000	26.000	26.000	92.000	3.538

Summer I 2016 TTU

CHEM 1107	Experimental Chemistry I	1.000	A-	4.000	031
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	AHRS	EHRS	QHRS	QPTS	GPA
Current	1.000	1.000	1.000	4.000	4.000
Cumulative	27.000	27.000	27.000	96.000	3.555

***** CONTINUED ON PAGE 2 *****

GRANT COFFEY
3205 42ND ST
LUBBOCK, TX 79413-3110

Date Issued: 04-DEC-2020

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Bobbie Brown, Registrar

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TEXAS TECH UNIVERSITY

Office of the Registrar, Lubbock, Texas 79409

Grant William Coffey
644542566 07/31/1996

SUBJ NO. COURSE TITLE CREDGRD PTS R C

Institution Information continued:

Fall 2016 TTU

GERM 2312	Literature of the Holocaust	3.000	B 9.000	040	
PSS 2401	Introductory Entomology	4.000	B 12.00	030	031
PSS 3323	Crop Physiology	3.000	A 12.00		
PSS 3421	Fundamental Prins Of Genetics	4.000	B 12.00		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	14.000	14.000	14.000	45.000	3.214
Cumulative	41.000	41.000	41.000	141.800	3.439

Spring 2017 TTU

AASC 2305	Funds Of Agri & Applied Eco	3.000	B 9.000	080	
ENGL 1301	Essentials Of College Rhetoric	3.000	B 9.000	010	
PSS 2432	Prins & Practs In Soils	4.000	B 12.00	090	
PSS 4325	Crop Water Management	3.000	A 12.00		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	13.000	13.000	13.000	42.000	3.230
Cumulative	54.000	54.000	54.000	183.800	3.388

Summer II 2017 TTU

CHEM 1108	Experimental Chemistry II	1.000	B- 3.000	031	
CHEM 1308	Principles Of Chem II	3.000	C 6.000	030	

	AHRS	EHRS	QHRS	QPTS	GPA
Current	4.000	4.000	4.000	9.000	2.250
Cumulative	58.000	58.000	58.000	192.800	3.310

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO. COURSE TITLE CREDGRD PTS R C

Institution Information continued:

Fall 2017 TTU

GEOL 1303	Physical Geology	3.000	B 9.000	030	
MATH 1300	Contemporary Math	3.000	B 9.000	020	090
NRM 4314	Watershed Planning	3.000	A 12.00	090	
PSS 3309	Intro Turf Science	3.000	B 9.000		
PSS 4335	Soil Fertility Nutrient Mgmt	3.000	B 9.000		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	15.000	15.000	15.000	48.000	3.200
Cumulative	73.000	73.000	73.000	240.000	3.287

Spring 2018 TTU

AASC 3306	Economics of the American West	3.000	A 12.00		
POLS 2306	Texas Politics & Topics	3.000	B 9.000	070	
PSS 4301	Agricultural Compounds	3.000	B 9.000		
PSS 4331	Soil Microbial Ecology	3.000	B+ 9.000		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	12.000	12.000	12.000	39.000	3.250
Cumulative	85.000	85.000	85.000	279.000	3.282

Summer 2018 TTU

CHEM 3105	Expt Organic Chemistry I	1.000	A 4.000		
CHEM 3305	Organic Chemistry I	3.000	C 6.000	090	

	AHRS	EHRS	QHRS	QPTS	GPA
Current	4.000	4.000	4.000	10.000	2.500
Cumulative	89.000	89.000	89.000	289.000	3.247

***** CONTINUED ON PAGE 3 *****

Date Issued: 04-DEC-2020

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TEXAS TECH UNIVERSITY

Office of the Registrar, Lubbock, Texas 79409

Grant William Coffey
641542566 07/31/1996

SUBJ NO.	COURSE TITLE	CREDGRD	PTS	R	C
Institution Information continued:					
Fall 2018 TTU					
COMS 2300	Public Speaking	3.000	A 12.00	011	
GIST 3300	Geographic Information Systems	3.000	B 9.000		
PSS 4100	Seminar	1.000	A 4.000		
PSS 4421	Principles Of Weed Science	4.000	B 12.00		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	11.000	11.000	11.000	37.000	3.363
Cumulative	100.000	100.000	100.000	326.000	3.260

Spring 2019 TTU					
PSS 3321	Forage/Pasture Crops	3.000	A- 12.00		
PSS 4305	Integrated Pest Mgmt	3.000	A 12.00		
PSS 4332	Soil Classification	3.000	B 9.000		
PSS 4415	Plant Biotechnology	4.000	A 16.00		
PSS 4425	Introductory Plant Pathology	4.000	A 16.00		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	17.000	17.000	17.000	65.000	3.823
Cumulative	117.000	117.000	117.000	391.000	3.341
Deans List					

***** TRANSCRIPT TOTALS *****

INSTITUTION	Ehrs:	117.000	QPTS:	391.000
	GPA-Hrs:	117.000	GPA:	3.341

***** END OF TRANSCRIPT *****

Date Issued: 04-DEC-2020

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Grade	Grade Meaning	Grade Points
A+, A, A-	Excellent	4.0
B+, B, B-	Good	3.0
C+, C, C-	Average	2.0
D+, D, D-	Below Average	1.0
F	Failure	0.0
CR	Credit	0.0 *
DS	Dropped (drop limit)	0.0 *
DW	Dropped (no drop limit)	0.0 *
DX	Dropped (drop limit with exception)	0.0 *
I	Incomplete	0.0 *
NC	No Credit (not calculated in GPA)	0.0 *
NP	Student did not attend (no g. adj.)	0.0 *
P	Pass	0.0 *
PR	Progress	0.0 *
R	Repeated to remove Incomplete+	0.0 *
W	Withdraw or Dropped During (Through Fall 2008)	0.0 *
W	Withdraw From University (as of Spring 2003)	0.0 *
WF	Withdraw Failing (through Fall 2008)	0.0
X	No Grade Reported	0.0 *

^aNot included in composite: 6/24.

FM = Farned House

Q149 = Quality Access

SCE = Simplex Error Index;

DPS = Quality Units

BASE	Base Module
AP	Advanced Placement questions
AL	Advanced Learning
CH	CHP extension
CT	Computerized tests
EL	Foreign Language Placement tests
EE	International Education course
SAF	SAFETY SYSTEM

where Γ is a constant depending on α and β .

Grade	Grade description
3A	Excellent
3B	Good
3C	Average
3D	Interior
3E	Failure
3F	Pass

Notes: Observed number of cases; λ = expected number of cases.

- 7. Four point system effective September 1, 82.
- 8. Texas Tech School College changed to Texas Tech University effective September 1, 1989
- 9. 3-digit course number changed to 4-digit course number effective September 1, 80
- 9. Faculty converted to 12 hr. credit for PH. G.A.
- 10. Faculty converted to 12 hr. credit for Honors 100

Core Curriculum Codes for Coursework Taken Through Summer 2019

Core Code	Description
010	Communication: Written (5 hrs)
011	Communication: Oral (3 hrs)
020	Mathematics: College Algebra (3 hrs)
021	Mathematics: Logic, Statistics, & Calculus (3 hrs)
030	Natural Science: Lecture (6 hrs)
031	Natural Science: Lab (2 hrs)
040	Humanities (3 hrs)
050	Visual & Performing Arts (3 hrs)
060	Social & Behavioral Sciences: US History (6 hrs)
070	Social & Behavioral Sciences: Political Science (6 hrs)
080	Social & Behavioral Sciences: Ind. or Group Behavior (3 hrs)
090	Technology & Applied Science (3 hrs)

Total Core SCH 47 hours

Core Curriculum Cycle for Courses to Taken Fall 2014 and Summer

Course Code	Description
0100	Communication (5 hrs)
0200	Mathematics (5 hrs)
0300	Life & Physical Sciences (5 hrs)
0400	Language, Philosophy, & Culture (5 hrs)
0500	Creative Arts (5 hrs)
0600	U.S. & Texas Government (5 hrs)
0700	U.S. & Texas Government (5 hrs)
0800	Social & Behavioral Sciences (5 hrs)
0900	Computer Applications & Oral Communication (5 hrs)
0000M	Computer & Access Control 7. Minimum of 100 hours of instruction

Total Case SDH 97: 130.5

[illegible][illegible]

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TEXAS TECH UNIVERSITY

Office of the Registrar, Lubbock, Texas 79409

Grant William Coffey
644542566 07/31/1996

Course Level: Graduate

Awarded Degree Master of Science 14-MAY-2022

Program : Biotechnology MS

College : Graduate School

Major : Biotechnology

SUBJ NO.	COURSE TITLE	CREDGRD	PTS	R	C
----------	--------------	---------	-----	---	---

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

202257	Texas Tech Univ School Of Law	AHRS	EHRS	QHRS	QPTS	GPA
Cumulative		0.00	13.00	0.00	0.00	0.00

INSTITUTION CREDIT:

Summer 2020 TTU

BTEC 6001	Biotechnology Internship	AHRS	EHRS	QHRS	QPTS	GPA
		1.000			A+ 4.000	
Current		1.000	1.000	1.000	4.000	4.000
Cumulative		1.000	1.000	1.000	4.000	4.000

Fall 2020 TTU

BTEC 6001	Biotechnology Internship	AHRS	EHRS	QHRS	QPTS	GPA
		2.000			A+ 8.000	
BTEC 6101	Biotechnology Seminar	1.000			A+ 4.000	
CHEM 5330	Biochemistry I	3.000			A 12.000	
Current		6.000	6.000	6.000	24.000	4.000
Cumulative		7.000	7.000	7.000	28.000	4.000

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO.	COURSE TITLE	CREDGRD	PTS	R	C
----------	--------------	---------	-----	---	---

Institution Information continued:

Spring 2021 TTU

BTEC 6001	Biotechnology Internship	1.000	A 4.000		
CHEM 5332	Biochemistry III	3.000	A 12.000		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	4.000	4.000	4.000	16.000	4.000
Cumulative	11.000	11.000	11.000	44.000	4.000

Fall 2021 TTU

BTEC 5301	Intro to Biotechnology	3.000	A+ 12.000		
BTEC 5322	Biinformatics Methods	3.000	A- 12.000		
CHEM 5104	Topics in Chemistry: Lab Safety & Responsible Conduct of Research	1.000	A 4.000		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	7.000	7.000	7.000	28.000	4.000
Cumulative	18.000	18.000	18.000	72.000	4.000

Spring 2022 TTU

BTEC 5311	Protein Engineering	3.000	A 12.000		
PSS 5325	Transgenic/Plant Cell Genetics	3.000	A+ 12.000		

	AHRS	EHRS	QHRS	QPTS	GPA
Current	6.000	6.000	6.000	24.000	4.000
Cumulative	24.000	24.000	24.000	96.000	4.000

***** CONTINUED ON PAGE 2 *****

GRANT COFFEY
3812 47TH ST
LUBBOCK, TX 79413-3702

Date Issued: 01-NOV-2022

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Office of the Registrar, Lubbock, Texas 79409

Grant William Coffey
644542566 07/31/1996

***** TRANSCRIPT TOTALS *****
 INSTITUTION Ehre: 24.000 Qpts: 96.000
 GPA-Hrs: 24.000 GPA: 4.000
 ***** END OF TRANSCRIPT *****

Date Issued: 01-NOV-2022

Page: 2

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Grade	Grade Meaning	Grade Points
A+, A, A-	Excellent	4.0
B+, B, B-	Good	3.0
C+, C, C-	Average	2.0
D+, D, D-	Below	1.0
F	Failure	0.0
CR	Credit	0.0 *
DR	Dropped (no credit)	0.0 *
DM	Dropped (no drop limit)	0.0 *
DE	Dropped (drop limit with exception)	0.0 *
I	Incomplete	0.0 *
NC	No Credit (not calculated in GPA)	0.0 *
NP	Student did not pass class (no grade)	0.0 *
P	Pass	0.0 *
PR	Progress	0.0 *
R	Repeated for removal of course	0.0 *
W	Withdrawn / Dropped / Passing through Fall 2008	0.0 *
W	Withdrawn / Dropped / Passing through Spring 2009	0.0 *
W	Withdrawn / Dropped / Passing through Fall 2018	0.0
W	Withdrawn / Dropped / Passing through Spring 2018	0.0
X	No Grade Reported	0.0 *

^a Not included for computing G^2 .

$\frac{1}{2} \left(\frac{1}{2} \right) = \frac{1}{4}$

QAR = Quality Index

$$G_{\text{eff}} = \sum_{\text{species } i} p_i \cdot \text{contribution}_i$$
$$0 \leq t_1 < t_2 < \dots < t_n = 1$$

Grade	Grade Mapping
A ²	Advanced Placement exam scores
A ¹	ACT exam scores
CLP	CEP exam scores
DE	Department exam scores
EE	Foreign Language Placement exam scores
S	International Baccalaureate exam scores
SAT	SAT exam scores

Note that each node is put or moved into the \mathcal{C}_i .

Grade	Grade Equivalent
6A	Elementary
6B	Junior
6C	Seventh
6D	Senior
6E	College
6F	Post

20. *Chen, Y. and J. H. Chen. 1999. The effects of the 1997 Asian financial crisis on the foreign exchange market in Taiwan. Journal of International Money and Finance 18: 101-114.*

- a. Engraved print in yellow ink, September 1903.
- b. Engraved print in blue ink, printed on two sheets, mounted on one, September 1905.
- c. Engraved print in blue ink, mounted on one sheet, September 1920.
- d. Engraved print in blue ink, mounted on one sheet, 1914.
- e. Engraved print in blue ink, mounted on one sheet, 1914.

$\frac{1}{\sqrt{\pi}} \int_{-\infty}^{\infty} f(x) e^{-x^2} dx = \frac{1}{\sqrt{\pi}} \int_{-\infty}^{\infty} f(x) e^{-x^2} dx$

Core Code	Description
110	Communication Writing (1 hr)
111	Communication Oral (1 hr)
120	Mathematics College Algebra (3 hrs)
121	Mathematics Logic, Matrices, & Probability (3 hr)
150	Natural Science Lecture (3 hrs)
151	Natural Science Lab (3 hrs)
155	Humanities (4 hrs)
156	Visual & Performing Arts (1 hr)
161	Social & Behavioral Sciences U.S. History (3 hrs)
162	Social & Behavioral Sciences Political Science (3 hrs)
180	Foreign Language Learning (1 hr)
190	Technology & Applied Science (3 hrs)

Total Cost of 10000

[illegible]

Core Code	Description
000A	Communication (6 hrs)
000B	Mathematics (3 hrs)
000C	Life & Physical Sciences (3 hrs)
000D	Language, Philosophy & Culture (3 hrs)
000E	Geography (3 hrs)
000F	U.S. & Texas History (3 hrs)
000G	U.S. & Texas Government (3 hrs)
000H	Social & Criminal Justice (3 hrs)
000I	Communication Option (100-1000) (3 hrs)
000J	Communication Option (1000-10000) (3 hrs)

References

TO: "KSI FOR AUTHORITY" Document globe from 1997 he never provided and would not sign a name. He told this man at a period over 1997-2001 years with the name of the man.

[illegible]

ADDITIONAL TESTS: The Institutional name and the word COPY appear at various points in the document. When this page is touched by two liquid sheets, an authentic document will turn brown. A black or white color copy of this document is not a genuine and should not be accepted as an official record. No copies of the document cannot be released to a third party without the written consent of the donor. If you agree to this letter for your own file, please sign it. If you have any questions about the document, please contact us at: 608-939-0100 or 608-939-0101. E-mail: info@wisc.edu

161023

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United States Bankruptcy Court
Northern District of Texas
1205 Texas Avenue, Room 306
Lubbock, Texas 79401

Chambers of
Robert L. Jones
United States Bankruptcy Judge

Telephone
(806) 472-5020

November 15, 2022

Re: Application of Grant Coffey

Dear Judge,

I submit this letter in support of Grant Coffey's application for a clerkship with your court. Grant has served as my law clerk since August 2022. As a bankruptcy judge, I have one law clerk, and I have always employed term clerks.

My clerks work on everything I work on. Although Grant is still relatively early in his clerkship, he has prepared several extensive memorandums on a range of legal issues, both in small consumer bankruptcy cases and in large, complicated commercial civil actions. Grant has a fine legal mind: his analysis is sharp, he asks good questions, and he timely completes each project. I am able to incorporate much of his work product into opinions that I issue. And Grant enjoys the work. He has a genuine interest in the law and the task of legal analysis.

Grant is an excellent writer and editor. His writing style is simple, concise, and clear. He avoids legalese and attempts to sound like a lawyer (or like the opinions from cases he read in law school). His approach is mature and, in my opinion, beyond his age and experience. After I complete my final draft of any opinion, Grant does a final review and invariably provides helpful edits that improve the opinion.

Finally, Grant has fit-in seamlessly with court staff, both in chambers and in our clerk's office. In short, he is fun to have around. I unreservedly recommend Grant for a clerkship with your court.

If you have any specific questions about Grant or his qualifications for a clerkship with your court, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert L. Jones", with a stylized flourish at the end.

Robert L. Jones
United States Bankruptcy Judge

Brandon Beck
Texas Tech University
School of Law
3311 18th Street #302
Lubbock, TX 79409

November 15, 2022

Dear Judge,

My name is Brandon Beck, I am an Assistant Professor at Texas Tech University School of Law and, formerly, an appellate attorney with the Federal Public Defender's Office, Northern District of Texas. I write this letter to wholeheartedly recommend Grant Coffey for a judicial clerkship position.

Grant was a student in my first-year Legal Practice course, which spans two semesters. Because there are only sixteen students in the class, I am able to get to know the students' personalities and abilities perhaps more than some of the other professors. Among a field of fine students, Grant stood out.

Grant is highly engaged. He was attentive and asked good questions that reflected a genuine curiosity about both the law and the practice of law. Grant is also smart and capable. He did well and did so consistently. The assignments I create for the students require a thoughtful approach to complex legal issues, both civil and criminal. He was able to handle these assignments with ease. I was impressed with his writing from the start and I watched his continued improvement throughout the year with great satisfaction. He was one of my top students, particularly when it came to legal research, writing, and overall demeanor. I only gave two As in the Spring semester and he earned one of them.

I ask a lot of my students and I require them to do good work. I've personally briefed over 200 federal appeals, I've argued more than a dozen cases before the Fifth Circuit, and in 2019, I briefed, argued, and won *United States v. Davis* before the United States Supreme Court. I know what it takes

to succeed as an attorney at a high level and I see that ability in Grant. I am certain he would be a valuable addition to your chambers.

If you have any questions or want additional feedback, please email me at brandon.beck@ttu.edu or call me at 512-657-9093.

Respectfully,

A handwritten signature in black ink that reads "Brandon Beck". The script is fluid and cursive, with the first letters of both first and last names being capitalized and prominent.

Brandon Beck



TEXAS TECH UNIVERSITY
School of Law

1802 Hartford
Lubbock, Texas 79409-0004
(806) 742-3791
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Website www.professorbeyer.com
Blog www.BeyerBlog.com

March 27, 2023

The Honorable Jamar K. Walker
United States District Court Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Re: Mr. Grant Coffey

Dear Judge Walker:

I am privileged to enthusiastically and without reservation recommend Mr. Grant Coffey for a Judicial Clerkship with your court.

Mr. Coffey was a student in my Property and Wills & Trusts courses at the Texas Tech University School of Law. His performance was phenomenal; he is one of my most interested, motivated, and enthusiastic students. His examination performances have been incredible placing him in either first or second place in the class. He is currently ranked in the top 7% of his entire class.

When I was in search of tutor to work with my Property students, I interviewed Mr. Coffey and was very impressed. Accordingly, I hired him and never regretted it. His efforts were amazing. I was especially impressed with his eagerness to do a good job, his ability to take advice, and his punctuality in completing all tasks associated with the position. As a testament to his excellent work, I have already hired him to serve as a tutor for my Spring 2022 Property class.

Mr. Coffey has the characteristics needed to be a stellar clerk in your court. His analytical skills and his ability to express himself both orally and in writing are admirable. He has a proven track record in law school academically which is enhanced by his service on our *Journal of Biosecurity, Biosafety, & Biodefense Law* and the *Texas Bank Lawyer* on which he serves as a member of the Editorial Board. As further evidence of his research and writing skills, he obtained the coveted position as the brief writer for our National Moot Court team.

In addition to academic skills, I have observed that Mr. Coffey has the high ideals, principles, and integrity to be a valuable member of the legal community. I have absolutely no doubt that he would be a credit to your court. I urge you to give his application your most serious consideration.



TEXAS TECH UNIVERSITY
School of Law

1802 Hartford
Lubbock, Texas 79409-0004
(806) 742-3791
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Direct dial (806) 834-4270
Fax (978) 285-7941
E-mail gwb@professorbeyer.com
Website www.professorbeyer.com
Blog www.BeyerBlog.com

Please feel free to call or write if you desire any further information.

Sincerely,

A handwritten signature in black ink that reads "Gerry W. Beyer".

Gerry W. Beyer
Governor Preston E. Smith Regents Professor of Law

Grant Coffey

3205 42nd Street
Lubbock, Texas 79413

806.317.4408
grant_coffey@txnb.uscourts.gov

Writing Sample:

The following is an excerpt from a memo that I drafted for Judge Robert L. Jones. The memo is the basis for an order addressing a creditor's objections to the bankruptcy trustee's summary judgment evidence.

The bankruptcy case stems from chapter 11 petitions filed by related businesses, collectively referred to as the debtors.

The objections arose from a contentious adversarial proceeding where the bankruptcy trustee sought to claw back transfers made by the debtors to the creditor. The creditor filed a motion for summary judgment. In response, the trustee cited several groups of evidence, one group comprised the debtors' excel spreadsheets. Some spreadsheets were used to fraudulently obtain funds through organizing and perpetrating a check kiting scheme orchestrated by the debtors CFO. The creditor alleged that the spreadsheets were inadmissible hearsay and not business records under Rule 803(6) of the Federal Rules of Evidence. The creditor further argued the spreadsheets were not properly sponsored and were used for fraudulent purposes; thus, the records are unreliable.

The memo, at this stage, was edited by myself and Judge Jones's judicial assistant. For this writing sample, the memo is structurally edited to emphasize only the excel spreadsheets and not the other hearsay objections raised by the creditor. Additionally, upon Judge Robert L. Jones's request, the party names have been changed to represent their relationship to the case instead of their identity.

A. Admissibility of the Evidence

The creditor alleges several pieces of the trustee's summary judgment evidence inadmissible hearsay.¹ Inadmissible evidence cannot be considered on a motion for summary judgment because inadmissible evidence "would not establish a genuine issue of material fact if offered at trial." *Renfroe v. Parker*, 974 F.3d 594, 598 (5th Cir. 2020) (quotation omitted). "[T]he summary judgment evidence need not be 'in a form that would be admissible at trial[.]'" *Geiserman v. MacDonald*, 893 F.2d 787, 793 (5th Cir. 1990) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106 S. Ct. 2548, 2553 (1986)).²

Hearsay is an out-of-court statement being offered to prove the truth of the matter asserted. Fed. R. Evid. 801(c). In general, evidence that is hearsay is not admissible unless the evidence falls within an exclusion or exception to the hearsay prohibition. Fed. R. Evid. 802. "Once a party has 'properly objected to [evidence] as inadmissible hearsay,' the burden shifts to the proponent of the evidence to show, 'by a preponderance of the evidence, that the evidence [falls] within an exclusion or exception to the hearsay rule and was therefore admissible.'" *Loomis v. Starkville Miss. Pub. Sch. Dist.*, 150 F. Supp. 3d 730, 742-43 (N.D. Miss. 2015) (internal citations omitted).

The creditor objects to the debtors' internal excel files.

i. Business Records Exception

The trustee argues that the debtors' excel sheets and employee emails fall within the business records exception to hearsay. Fed. R. Evid. 803(6). The creditor argues that the emails and excel sheets are not admissible because the trustee has not shown the creators had an

¹ The creditor objects to the debtors' CFO's testimony, the factual resumes of criminal proceedings against the debtors' employees, emails between the debtors' employees, and excel spreadsheets used in the debtors' fraud.

² For example, the court may consider testimony by affidavit that might not otherwise be admissible at trial. *Thomas v. Atmos Energy Corp.*, 223 F. App'x 369 (5th Cir. 2007).

obligation to create the documents and has not properly authenticated that the documents have been created for business purposes. To admit the documents as business records under Rule 803(6), the documents or records (i) must have been made at or near the time by someone with knowledge, (ii) kept in the ordinary course of business, (iii) made in a regular practice, and (iv) these elements must be shown by the testimony of the custodian or a qualified witness, then (v) the opponent may show the evidence lacks trustworthiness.

1. Excel Sheets

The creditor alleges that the excel sheets are not admissible under Rule 803(6) because they have unknown authors, no witness sponsored the documents, and were part of the debtors' fraud. Speaking to the authorship and sponsoring of the evidence, courts have found that a trustee can "establish [the business record] requirements through 'the testimony of the custodian or another qualified witness,' or by means of an out-of-court certification procedure established by rule or statute." *Curtis v. Perkins*, 781 F.3d 1262, 1267 (11th Cir. 2015) (citations omitted). Additionally, courts have held that the trustee's testimony is sufficient to authenticate the requirements of Rule 803(6) when the trustee's testimony is presented with enough circumstantial evidence to establish the trustworthiness of the documents. *Curtis*, 781 F.3d at 1268-69; *United States v. Flom*, 558 F.2d 1179, 1182 (5th Cir. 1977) ("the law is clear that under circumstances which demonstrate trustworthiness it is not necessary that the one who kept the record, or even had supervision over their preparation, testify"). Here, the trustee relies on the collection method, electronic records, interviews with employees, and a witness's deposition to conclude that the excel sheets were created and used in the ordinary course of debtors' business. ECF No. 288-1, Pl.'s Ex. B at App. 786; ECF 342-5, Pl.'s Ex. B at App. 1720.

Moreover, fraudulent activity does not preclude a business's records from being business records. *See United States v. Kaiser*, 609 F.3d 556, 575-76 & n.6 (2nd Cir. 2010). "The element of unusual reliability of business records is said variously to be supplied by systematic checking, by regularity and continuity which produce habits of precision, by actual experience of business in relying upon them, or by a duty to make an accurate record as part of a continuing job or occupation." Fed. R. Evid. 803 advisory committee's note to Rule 803(6).

Here, the debtors' employees routinely relied on the spreadsheets. An example is an exhibit³ discussed in a witness's deposition—the exhibit is a spreadsheet documenting the debtors' check kiting. ECF No. 342-1 at App. 204, and 206:15-18. The witness describes the spreadsheet as "the daily intercompany spreadsheet, and it shows basically the amount coming from each dealership payable to which dealership it's payable to." *Id.* at App. 205. In the spreadsheet, the debtors' CFO directs the amount of money to deposit at each bank. *Id.* at App. 208. Employees then would deposit the requested amount in the specified bank account. The purpose of the documents was to perpetuate a check-kiting scheme, but the reliability of the documents is evidenced by the employee's reliance on the documents.

Ultimately, the Court should find that the excel sheets fall within the Rule 803(6) exception to hearsay because the debtors' employees relied upon the documents in the ordinary course of business and were appropriately sponsored by the trustee.

³ ECF No. 337-9 at App. 2515-18 (Exhibit F-16).

Applicant Details

First Name	Amy
Middle Initial	M
Last Name	Cohen
Citizenship Status	U. S. Citizen
Email Address	cohen728@umn.edu
Address	<div> Address Street 940 Franklin Ter, Apt. 405 City Minneapolis State/Territory Minnesota Zip 55406 Country United States </div>
Contact Phone Number	9196100244

Applicant Education

BA/BS From	University of North Carolina-Chapel Hill
Date of BA/BS	May 2019
JD/LLB From	University of Minnesota Law School http://www.law.umn.edu
Date of JD/LLB	May 1, 2024
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	Minnesota Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships	Yes
--------------------------------------	-----

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Reitz, Kevin
reitz027@umn.edu
(612) 626-3078
Murray, JaneAnne
murrayj@umn.edu
Schwarcz, Daniel
schwarcz@umn.edu
612-625-4272

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Amy CohenShe/her/hers | 919-610-0244 | cohen728@umn.edu | [linkedin.com/in/amy-cohen](https://www.linkedin.com/in/amy-cohen)

Judge Jamar K. Walker
 United States District Court for the Eastern District of Virginia
 600 Granby Street
 Norfolk, VA 23510

May 7, 2023

Dear Judge Walker,

I am a second-year law student at the University of Minnesota Law School and I am eager to apply for a 2024 clerkship in your chambers. I became interested in the role after learning about your career in criminal justice prior to becoming a judge. During my career, I hope to work in the criminal justice system as well as criminal justice reform more broadly. I would love to work closely with someone who has experience advocating from within the system and has since transitioned into a role as a decision-maker.

When I was a pre-teen, I started volunteering through my local YMCA. I continued in volunteer and leadership positions through high school and college and somewhere along the way realized that I was meant for a career where I could make a positive impact. I started law school with the goal of building a career in which I could do something that would benefit others. Clerking in your chambers and learning from someone who has spent much of their career in public service would be the first step towards building a public interest career of my own.

I did not have one moment where I realized that a legal career would be my path, but rather a series of opportunities that led me to that realization. The summer reading before my first year of college was *Just Mercy* by Bryan Stevenson. After reading the book, I attended Mr. Stevenson's lecture on our campus and witnessed one of the most incredible talks I had ever heard. I empathized with the importance of his work and wanted to find a path that I could throw my passion into like he did. Knowing almost nothing about law or the legal field, I tried to find out on my own if a career as a lawyer might be for me. Every step I took made me more certain that it was.

I began practicing legal writing as a paralegal before coming to law school. Since then, I have made enormous gains in my legal research and writing skills which will reflect in a role as your law clerk. I worked on my judicial writing skills specifically through my externship with Judge Frank. Last year, I received the Best Brief Award for my legal research and writing seminar and thus earned a grade of high pass for the class. As a staffer on the *Minnesota Law Review*, I wrote a note on the constitutional right to counsel which was chosen for publication in Issue 1 of our upcoming volume, the highest honor possible for a student note. In addition to gaining experience in the courtroom during my summer at the Minnesota State Board of Public Defense, I drafted formal court documents, including briefs and motions, and more informal memorandums on research topics for intraoffice purposes. This semester I externed with Public Justice, an impact litigation organization, performing targeted legal research on specific issues and drafting memoranda for use in complex cases. My array of legal writing and research experiences, from direct representation to the judiciary to litigation, will allow me to bring a diverse skill set to your chambers and have a unique perspective on multiple legal issues.

I am applying for a federal district court clerkship specifically because I want to learn more about district court practice and procedures to prepare myself for future practice in a federal courtroom. I have already familiarized myself with federal practice through an externship under Judge Donovan Frank and classes related to federal law, including Federal Jurisdiction, Federal Habeas, and Equal Protection. I am particularly interested in the EDVA because I intend to practice in this region. I was living in D.C. before moving to Minnesota and plan to move back to the east coast after graduating to begin my career. This summer, I will be working as a law clerk in the EDVA Federal Public Defender's Office in Alexandria.

For the reasons stated above, I will be a valuable addition to your judicial team. I have enclosed my resume, writing sample, transcript, and three letters of recommendation. Thank you for your consideration.

Best regards,

Amy Cohen

Amy CohenShe/her/hers | 919-610-0244 | cohen728@umn.edu | [linkedin.com/in/amy-cohen](https://www.linkedin.com/in/amy-cohen)**EDUCATION****University of Minnesota Law School** – Minneapolis, MN

Juris Doctor, Expected May 2024

Minnesota Law Review, Staff Member (Vol. 107), Senior Articles Editor (Vol. 108)**GPA:** 3.926, Rank: 9 / 226 (current as of Spring 2023)**Publication:** Note, *From Powell to Present: Defining the Right to Counsel Beyond Rothgery*, 108 MINN. L. REV. (forthcoming Nov. 2023)**Awards:** “A” Dean’s List (2021–2023); Academic Excellence Scholarship; Justice John Paul Stevens Public Interest Fellow (2023); Civic Scholar (in progress); Best Small Section Legal Writing Brief; Minnesota Law Review Cite Check Award**Leadership:** Clemency Clinic, Student Director; Structured Study Group Instructor; Torts Grading Assistant; LexisNexis Representative; Minnesota Justice Foundation, Secretary; Mid-Minnesota Legal Aid; Asylum Law Project; Norwegian Criminal Legal Processes and Punishment Trip**University of North Carolina at Chapel Hill** – Chapel Hill, NC

B.A. Global Studies and Political Science, minor in Social and Economic Justice, May 2019

GPA: 3.87/4.0**Honors Thesis:** [Failed Promises: An Analysis of Post-Apartheid Land Reform \(2019\)](#)**Awards:** Kimball King Undergraduate Research Award; Phi Beta Kappa Member; Buckley Public Service Scholar; Carolina Excel Scholar and First Year Fellow; Pi Sigma Alpha - Political Science Honors Society; Dean’s List - all semesters**Leadership:** Legal Resources Centre, Legal Intern; Public Impact, Research Intern; The Life Center, APPLES Intern; Carolina Center for Public Service, Winter Break Trip Leader; Henry Clay Center for Statesmanship, NC Representative; Alpha Phi Omega, Rush, Public Relations, and Care Chair**Study Abroad:** Summer Term, Sevilla; Honors Fall Semester, Cape Town; AIESEC Intern, Buenos Aires**EXPERIENCE****Federal Public Defender for the Eastern District of Virginia** – Alexandria, VA*Summer Law Clerk* May 2023–Present

Develop research, writing, and representation skills for the review and assessment of cases within the federal criminal justice system. Engage in witness interviews, investigations, plea negotiations, and related projects.

Robina Institute of Criminal Law and Criminal Justice – Minneapolis, MN*Research Assistant* May 2022–Present

Finalize Prison-Release Discretion and Prison Population Size state reports for publication. Update and draft related law review article with substantive content for publication submission.

Public Justice – Washington, D.C.*General Litigation Extern* January 2023–April 2023

Advance goals of high impact litigation through research, writing, and strategic communications. Collaborate with all projects, including Access to Justice, Debtors’ Prison, Students’ Civil Rights, and Environmental Enforcement.

Honorable Donovan Frank, Sr. U.S. District Judge, District of Minnesota – St. Paul, MN*Judicial Extern* September 2022–December 2022

Prepared memoranda, proposed motions, and legal research related to court calendar. Observed federal court proceedings, ranging from settlement conferences to motion hearings to trials.

State of Minnesota Board of Public Defense, First Judicial District – Chaska, MN*Certified Student Attorney* May 2022–August 2022

Represented adult and juvenile clients at daily bail hearings, weekly probation violation hearings, and various other hearings. Reviewed evidence files. Researched case law. Drafted formal court briefs and motions.

Fragomen, Del Rey, Bernsen & Loewy, LLP – Washington D.C.*Senior Business Immigration Analyst* June 2019–June 2021

Managed immigrant, nonimmigrant and naturalization matters, such as Special Immigrant cases, family-based adjustments of status, immigrant visa processing, and PERM.

University of Minnesota Unofficial Transcript

Name : Cohen,Amy Marie
Student ID : 5755187
Birthdate : 11 - 15

Print Date: 06/04/2023

MOST RECENT PROGRAMS

Campus : University of Minnesota, Twin Cities
Program : Law School
Plan : Law J D
Degree Sought : Juris Doctor

Course	Description	Attempted	Earned	Grade	Points
LAW 6650	Advanced Administrative Law	3.00	3.00	B+	9.999
LAW 6834	Federal Habeas Corpus	2.00	2.00	A	8.000
LAW 7102	Law Review: Research & Writing	1.00	1.00	H	0.000
LAW 7623	Public Interest Field Placemnt	3.00	3.00	H	0.000
LAW 7850	CL: Clemency Project	3.00	3.00	A	12.000
TERM GPA :	3.727	TERM TOTALS :	15.00	15.00	11.00
					41.000

***** Beginning of Law Record *****

Fall Semester 2021
University of Minnesota, Twin Cities
Law School
Law J D

Course	Description	Attempted	Earned	Grade	Points
LAW 6001	Contracts	4.00	4.00	A	16.000
LAW 6002	Legal Research & Writing	2.00	2.00	H	0.000
LAW 6005	Torts	4.00	4.00	A+	17.332
LAW 6006	Civil Procedure	4.00	4.00	A	16.000
LAW 6007	Constitutional Law	3.00	3.00	A-	11.001
TERM GPA :	4.022	TERM TOTALS :	17.00	17.00	15.00
					60.333

Spring Semester 2022
University of Minnesota, Twin Cities
Law School
Law J D

Course	Description	Attempted	Earned	Grade	Points
LAW 6002	Legal Research & Writing	2.00	2.00	H	0.000
LAW 6004	Property	4.00	4.00	A+	17.332
LAW 6009	Criminal Law	3.00	3.00	A-	11.001
LAW 6013	Law in Practice: 1L	3.00	3.00	P	0.000
LAW 6018	Legislation and Regulation: 1L	3.00	3.00	A-	11.001
TERM GPA :	3.933	TERM TOTALS :	15.00	15.00	10.00
					39.334

Fall Semester 2022
University of Minnesota, Twin Cities
Law School
Law J D

Course	Description	Attempted	Earned	Grade	Points
LAW 6085	Criminal Procedure: Investigtn	3.00	3.00	A	12.000
LAW 6152	Federal Jurisdiction	3.00	3.00	A	12.000
LAW 6219	Evidence	3.00	3.00	A	12.000
LAW 7004	Structured Study Grp Instrctrs	2.00	2.00	S	0.000
LAW 7102	Law Review: Research & Writing	1.00	1.00	H	0.000
LAW 7628	Judicial Field Placement	2.00	2.00	H	0.000
TERM GPA :	4.000	TERM TOTALS :	14.00	14.00	9.00
					36.000

Spring Semester 2023
University of Minnesota, Twin Cities
Law School
Law J D

Course	Description	Attempted	Earned	Grade	Points
LAW 6084	Equal Protection	3.00	3.00	A-	11.001

Fall Semester 2023

University of Minnesota, Twin Cities
Law School
Law J D

Course	Description	Attempted	Earned	Grade	Points
LAW 6215	Environmental Law	3.00	0.00		0.000
LAW 6618	Trial Practice	3.00	0.00		0.000
LAW 6661	PR - General	3.00	0.00		0.000
LAW 6814	Racketeering and the RICO Act	2.00	0.00		0.000
LAW 7100	Law Review Editors	2.00	0.00		0.000
LAW 7851	CL: Clemency Project Directors	3.00	0.00		0.000
TERM GPA :	0.000	TERM TOTALS :	16.00	0.00	0.00
					0.000

Law Career Totals
CUM GPA: 3.926 UM TOTALS: 77.00 61.00 45.00 176.667

UM + TRANSFER TOTALS: 61.00

- - - - - Non-Course Milestones - - - - -

Recognition for Public Service
Milestone Status: Completed

***** End of Transcript *****

8/24/2020

Internal Transcript

Seq Nbr 1
ID 730003968 Amy Cohen

Internal Unofficial Transcript - UNC Chapel Hill

Phi Beta Kappa

BUCKLEY PUBLIC SERVICE SCHOLAR

Name : Amy Cohen

Student ID: 730003968

Print Date : 2020-08-24

Degrees Awarded

Degree : Bachelor of Arts

Confer Date : 2019-05-12

Degree Honors : Highest Distinction

Plan : College of Arts and Sciences

Global Studies Honors 1st Major

Sub-Plan : Global Studies: International Politics and Latin American Studies

Plan : Political Science

Plan : Social and Economic Justice

Test Credits

Test Credits Applied Toward AS Bachelor Program

2015 Fall

BIOL	101	PRINCIPLES OF BIOL	3.00	3.00 BE
BIOL	101L	INTRO BIOLOGY LAB	1.00	1.00 BE
ENEC	202	ENVIRONMENTAL SCIENCE	4.00	4.00 BE
ENGL	110	CREDIT FOR AP ENGL LANG TEST	3.00	3.00 BE
GEOG	120	WORLD REGIONAL GEOG	3.00	3.00 BE
HIST	----	HIST GENERAL ELECTIVE	3.00	3.00 BE

8/24/2020

Internal Transcript

HIST	128	AM HIST SINCE 1865	3.00	3.00	BE
MATH	110P	ALGEBRA		0.00	BE
MATH	110P	ALGEBRA		0.00	BE
MATH	110P	ALGEBRA		0.00	BE
MATH	110P	ALGEBRA		0.00	BE
MATH	129P	PRECALCULUS MATHEMATICS		0.00	BE
MATH	129P	PRECALCULUS MATHEMATICS		0.00	BE
MATH	129P	PRECALCULUS MATHEMATICS		0.00	BE
MATH	129P	PRECALCULUS MATHEMATICS		0.00	BE
MATH	231	CALC FUNC ONE VAR I		0.00	BE
MATH	231	CALC FUNC ONE VAR I	3.00	3.00	BE
MATH	232	CAL FUNC ONE VAR II	3.00	3.00	BE
PSYC	101	GENERAL PSYCHOLOGY	3.00	3.00	BE
STOR	155	INTRO STATISTICS	3.00	3.00	BE

Test Trans GPA: 0.000 Transfer Totals : 32.00 32.00 0.000

- - - - - Other Credits - - - - -

Other Credits Applied Toward AS Bachelor Program

2015 Fall

SPAN	203	INTERMEDIATE SPANISH I		0.00	PL
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Other Trans GPA: 0.000 Transfer Totals : 0.00 0.00 0.000

- - - - - Academic Program History - - - - -

Program : AS Bachelor

2015-05-13 : Active in Program

2015-05-13 : Undecided Major

2015-07-16 : Active in Program

2015-07-16 : Business Administration Major

2015-09-29 : Active in Program

2015-09-29 : Global Studies Major

2015-09-29 : Social & Econ Justice Minor Minor

8/24/2020

Internal Transcript

2016-02-02 : Active in Program

2016-02-02 : Media and Journalism Major

2016-02-02 : Global Studies Second Major

2016-02-02 : Social & Econ Justice Minor Minor

Program : MJ Bach Arts Media and Journl

2016-05-11 : Active in Program

2016-05-11 : Media and Journalism Major

2016-05-11 : Global Studies Second Major

2016-05-11 : Social & Econ Justice Minor Minor

Program : AS Bachelor of Arts

2016-08-19 : Active in Program

2016-08-19 : Global Studies Major

2016-08-19 : Social & Econ Justice Minor Minor

2016-08-29 : Active in Program

2016-08-29 : Global Studies Major

2016-08-29 : Political Science Second Major

2016-08-29 : Social & Econ Justice Minor Minor

- - - - Beginning of Undergraduate Record - - - -

2015 Fall

ECON	101	ECON: INTRO	3.00	3.00 B	9.000
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ENGL	105I	ENG COMP/RHET (INTERDISC)	3.00	3.00 A	12.000
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Course Topic(s): Writing in the Humanities

Writing in the Humanities

ENGL	129	LIT/CULTURAL DIVERSITY	3.00	3.00 A	12.000
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PLCY	71	JUSTICE AND INEQUALITY	3.00	3.00 A-	11.100
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SPAN	204	INTERMEDIATE SPANISH II	3.00	3.00 A-	11.100
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TERM GPA :	3.680	TERM TOTALS :	15.00	15.00	55.200
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CUM GPA :	3.680	CUM TOTALS :	15.00	47.00	55.200
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8/24/2020

Internal Transcript

Dean's List

Good Standing

2016 Spr

GLBL	210	GLOBAL ISSUES	3.00	3.00 A-	11.100
HIST	143	LATN AM SINCE INDEP	3.00	3.00 A	12.000
LFIT	103	LIFE FITNESS: AEROBICS	1.00	1.00 A	4.000
MUSC	146	INTRO TO WORLD MUSICS	3.00	3.00 A-	11.100
POLI	238	CONT LAT AM POLI	3.00	3.00 B+	9.900
SPAN	260	INTR SPAN/SP AM LIT	3.00	3.00 B+	9.900
SPAN	308	LAC RECITATION	1.00	1.00 A-	3.700
TERM GPA : 3.629			TERM TOTALS :	17.00 17.00	61.700
CUM GPA : 3.653			CUM TOTALS :	32.00 64.00	116.900

Dean's List

Good Standing

2016 Fall

AMST	398	SERVICE LEARNING	3.00	3.00 A	12.000
PLCY	210	POLICY INNOV & ANALYSIS	3.00	3.00 A	12.000
POLI	100	INTRO TO GOVT IN US	3.00	3.00 A-	11.100
WMST	124	SEX & GEN IN SOC	3.00	3.00 A	12.000
TERM GPA : 3.925			TERM TOTALS :	12.00 12.00	47.100
CUM GPA : 3.727			CUM TOTALS :	44.00 76.00	164.000

Dean's List

Good Standing

2017 Spr

ANTH	319	GLOBAL HEALTH	3.00	3.00 A	12.000
GLBL	381	GREAT DECISIONS	1.00	1.00 PS	
POLI	150	INTERN REL WRLD POL	3.00	3.00 A	12.000

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Internal Transcript

SOCI	274	SOCIAL & ECON JUSTICE	3.00	3.00 A	12.000
SOWO	492	SEMINAR: SERVICE LEARNING	3.00	3.00 A	12.000
SPAN	300	SPAN COMPOS/GRAMMAR REV	3.00	3.00 A-	11.100
TERM GPA :		3.940	TERM TOTALS :	16.00	16.00 59.100
CUM GPA :		3.781	CUM TOTALS :	60.00	92.00 223.100

Dean's List

Good Standing

2017 Sum I

TREQ	289	ELECTIVE	3.00	3.00 PS	
TREQ	289	ELECTIVE	3.00	3.00 PS	
YAP	302	STDY IN SPAIN		0.00 NE	
TERM GPA :		0.000	TERM TOTALS :	6.00	6.00 0.000
CUM GPA :		3.781	CUM TOTALS :	66.00	98.00 223.100

Good Standing

2017 Fall

HIST	279H	MODERN SOUTH AFRICA	3.00	3.00 A	12.000
HNRS	353	HISTORICAL ANALYSIS	3.00	3.00 A	12.000
Course Topic(s): CapeTown: Contemp S Africa					
HNRS	393	INTERNSHIP	6.00	6.00 A	24.000

Course Topic(s): Cape Town/Internship

YAP	419	STDY IN SOUTH AFRICA		0.00 NE	
TERM GPA :		4.000	TERM TOTALS :	12.00	12.00 48.000
CUM GPA :		3.818	CUM TOTALS :	78.00	110.00 271.100

Dean's List

Good Standing

2018 Spr

ENGL	305	ADV EXPS WRIT/LAW	3.00	3.00 A	12.000
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8/24/2020

Internal Transcript

HBEH	610	ALTERNATIVE SPRING BREAK	2.00	2.00 PS	
POLI	411	CIVIL LIB IN U S	3.00	3.00 A	12.000
POLI	477	ADV FEM POL THEORY	3.00	3.00 A-	11.100
HIST	276	MODERN MIDDLE EAST	3.00	3.00 A	12.000
TERM GPA :		3.925	TERM TOTALS :	14.00	14.00 47.100
CUM GPA :		3.834	CUM TOTALS :	92.00	124.00 318.200

Dean's List

Good Standing

2018 Fall

ANTH	252	ARCHAEOLOGY OF FOOD	3.00	3.00 A	12.000
GEOG	453	POLITICAL GEOGRAPHY	3.00	3.00 A	12.000
GLBL	490	CURRENT TOPICS	3.00	3.00 A	12.000
GLBL	691H	HONORS IN GLBL	3.00	3.00 A	12.000
POLI	435	DEMY & DEVL LAT AM	3.00	3.00 A	12.000
TERM GPA :		4.000	TERM TOTALS :	15.00	15.00 60.000
CUM GPA :		3.859	CUM TOTALS :	107.00	139.00 378.200

Dean's List

Good Standing

2019 Spr

GLBL	692H	HONORS IN GLBL	3.00	3.00 A	12.000
POLI	271	MOD POL THOUGHT	3.00	3.00 A	12.000
TERM GPA :		4.000	TERM TOTALS :	6.00	6.00 24.000
CUM GPA :		3.867	CUM TOTALS :	113.00	145.00 402.200

Good Standing

Cancel

May 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to give my highest possible recommendation in support of Amy Cohen's clerkship application.

Amy was an outstanding student in my 1L Criminal Law class in the Spring of 2022—so much so that I offered her a summer job as research assistant well before the semester's end. Amy regularly attended office hours for the course to talk about substantive Criminal Law questions and her career plans. During one Zoom session I discovered that she had begun to amass an extraordinary academic record, although she did not volunteer the information until I asked her directly.

This semester, Amy has once again been a standout in my upper-level Criminal Procedure course. She chose to devote her Law Review Note to a subject from the course: a comparative study of the adequacy of states' processes for provision of appointed counsel in the immediate post-charging stage of criminal cases. The Supreme Court requires that counsel be available to indigent defendants "within a reasonable time" of the filing of charges and at "critical stages" before trial, but this leaves much room for jurisdictional variation. Certain important questions remain open, such as whether a bail hearing is a "critical stage." To Amy's credit, she has chosen to investigate actual processes and practical effects in a variety of jurisdictions. Her interest extends beyond the applicable constitutional law to the possibility of statutory and rulemaking approaches to the provision of defense services in the earliest stages of criminal cases. This is more ambitious than the "standard" law journal Note, which relies on easily accessible legal sources. Amy has had no hesitation in taking on the challenge.

Amy has worked for me as a research assistant since the Spring of 2022 and I have promised continued employment through graduation. Early in Spring 2022, I realized I had been uncommonly lucky to hire her. In my 35 years as a legal academic, the combined quality and speed of Amy's work has been the best I have ever encountered in a student RA. To date, all of her work has been for a large research project funded by Arnold Ventures and housed in the Robina Institute of Criminal Law and Criminal Justice: American Prison Release Systems: Indeterminacy in Sentencing and the Control of Prison Population Size. Amy's assignments have entailed state-by-state research into prison-release mechanisms such as parole board discretion, good-time and earned-time discounts, medical release, geriatric release, and executive clemency. Each assignment has required her to dive into a new state system with no prior grounding—and the states are highly dissimilar in their prison release frameworks. I expected a significant learning curve before Amy's work would be sure-footed enough to spur the project along. Instead, she immediately began returning her assignments more quickly than I could generate new ones. I am sure she has been learning on the job, but she started from a very high baseline.

One measure of Amy's productivity is to compare her output with a second student research assistant I hired at the same time. Both received similar state-specific assignments through the late Spring and Summer of 2022. Hour for hour, however, Amy's speed of completion was more than three times that of her counterpart. This was not because she was getting the easier tasks. I quickly realized that I should send the most demanding assignments to Amy (that is, for states with the most byzantine systems). The degree of difficulty has never fazed her. On the contrary, she has become fascinated with the jurisdictional variations the work is throwing her way, and she well understands the policy implications of those variations.

More impressive than Amy's quickness is the sheer excellence of her work. She is remarkably acute and judicious in deciding how to apply her talents. In every one of the reports she has returned to me, she has covered straightforward issues with little effort while diving into the most tangled and important questions with close attention. Typically, she has added value beyond what the assignment contemplated. I cannot think of an insight she has offered that I did incorporate when preparing individual state reports for publication. I have come to think of her as an invaluable resource—although I will have access to her time and effort only until she graduates. One goal always present in my mind is to make maximum use of her talents while I can.

Amy's writing reflects the qualities of mind I have been describing. She knows how to get a point across without wasting anyone's time. The important observations are sharp and never hidden in verbiage. She reaches closure on specific topics and keeps things moving forward. As the Summer of 2022 progressed, it became clear to everyone working on the American Prison Release project that our state-specific research and publications were running well ahead of schedule. For that I give Amy 90 percent of the credit (and the rest to myself for scrambling to keep up with her). Indeed, among the project team, I began to hear jokes about "Reitz's genius research assistant." All of this is especially notable for someone who was only a 1L student when I first hired her.

Amy takes on more activities than other excellent students. As a second-year student, she is a member of Minnesota's flagship Law Review, works as a Structured Study Group Instructor (a tutor for one section of 1L Torts students), and works as a judicial extern for Federal District Court Judge Donovan Frank. I have told Amy that she is free to put the American Prison Release project on a back burner if she gets overwhelmed with her other responsibilities—but that has never happened. She continues to return assignments with surprising speed and high quality. Whatever Amy's limits may be, I have yet to find them.

Kevin Reitz - reitz027@umn.edu - (612) 626-3078

On a personal level, Amy is pleasant, modest, witty, and well informed. Anyone who interacts with her will quickly be aware of her sharp intelligence, but she is not self-promoting. She is driven but collegial. She competes with herself, not others. When writing this letter, I asked her how she handles her extraordinary self-inflicted workload. She told me that, "Mostly, it's because I'm not a procrastinator at all." She organizes and prioritizes her to-do list—and works steadily on each project every day. She says, "I live by my planner." If she has a paper due, it will be finished a week early. When exam week rolls around, she feels "the pressure is off" because she has kept up with her courses all through the semester. In my career, I have known a handful of students and colleagues who have had this anti-procrastination ability. It is extremely rare.

Amy is pursuing her law degree with a strong sense of social responsibility, with goals of working in the public interest sector. One reason she chose Minnesota for law school is that we offered her a full scholarship for all three years. She wanted to save herself from a heavy debt load so she would later be free to pursue opportunities in public interest, public defense, and impact litigation. I am not betting against her.

On any year's clerkship market, Amy is a rare find. Please do not hesitate to contact me if you want more information. My cell is 651-890-6897.

Best regards,

Kevin Reitz

Kevin Reitz - reitz027@umn.edu - (612) 626-3078

May 17, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to write in support of Amy Cohen's application for a clerkship in your chambers. I taught Ms. Cohen in my evidence class this past fall, and she is currently a student in my clemency clinic. Her work for me has been so impressive that I asked her to be a student director of the clinic during the 2023-24 academic year. In addition, over the recent spring break, I spent a week with Ms. Cohen in Norway visiting a prison and representatives of the Norwegian penal and criminal justice systems. As such, I am well acquainted with her capabilities and character, and can unreservedly recommend her as an extremely intelligent, hard-working and engaging individual who is well-suited for a judicial clerkship.

My clemency clinic represents federal and state inmates in court proceedings or administrative clemency proceedings that permit a "second look" at their long sentences. As part of this process, we typically draft a memorandum that addresses complex sentencing issues (for example, arguing that the inmate would receive a lower sentence today by law or policy), factual mitigation (relating to the inmate's role in the offense, prior criminal history and personal history), and recidivism potential (analyzing the inmate's prison record and developing a comprehensive release plan). Ms. Cohen took on the representation of a prisoner seeking a commutation of his life sentence before the Pardon Board of Minnesota for his participation in a homicide at the age of fifteen. Her client, a Hmong refugee, is now in the 23rd year of his sentence. Ms. Cohen has embraced this representation with rigor and empathy. I accompanied her on a visit to the client's place of incarceration in Moose Lake and observed her interactions with him. She was the consummate professional throughout the visit but also warm and kind. Her approach to the representation and the drafting of the memorandum she will submit on his behalf has been intelligent, creative and impressively well-organized. Her client is in great hands.

I got to know Ms. Cohen well during our trip to Norway, during which Ms. Cohen and I stayed in the same apartment and shared many meals. The focus of the trip was our visit to Halden Prison, reputedly the most humane prison in the world, and several meetings with senior officials in the Nordic penal and criminal justice systems, including three members of the Norwegian parliament. Throughout our packed schedule, Ms. Cohen was always prompt, professional and armed with relevant knowledge. She was keenly attentive, informed and engaged during each visit, and asked perceptive and thoughtful questions. When we debriefed after each meeting, Ms. Cohen's insights were trenchant and cogent.

Ms. Cohen was an excellent student in my evidence class, which used the "problem-based" method to introduce the students to the Rules of Evidence. When called on in class to analyze the hypotheticals I presented, Ms. Cohen was meticulous and painstaking, evincing a clear grasp of the relevant rules and the assigned readings. She was awarded one of the small number of straight "As" I handed out based on my three-hour hypothetical-based essay exam. This was no mean feat, as the exam this year was a difficult one and I had almost 100 students in the class.

Let me close by noting a few of Ms. Cohen's personal qualities. I have spent more time with Ms. Cohen than I have with any of my other students, what with our trip to Norway together and our drives to local prisons, including Moose Lake. I have found her to be an absolute pleasure in my one-on-one dealings with her. She is perceptive, thoughtful, observant, witty and worldly-wise. I have had wonderful conversations with her. In all, I believe Ms. Cohen would be a terrific addition to your chambers and I hope that you will closely consider her application.

Please do not hesitate to contact me if you require any further information.

Very truly yours,

Prof. JaneAnne Murray
Professor of Practice

JaneAnne Murray - murrayj@umn.edu

May 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to strongly recommend that you consider hiring Amy Cohen for a judicial clerkship in your chambers. Amy is an immensely talented student who has excelled in every facet of her short law school career, as evidenced by her nearly perfect GPA and assorted legal writing awards. She is also a hard worker and immensely detail-oriented. Finally, she is a genuinely friendly and level-headed person. In short, I have no doubt that Amy would make an outstanding judicial law clerk.

I first came to know Amy when she was one of approximately 50 students in my contract law class in the fall of 2021. Unlike most law school classes, my contract law class requires students to produce numerous graded pieces of work product throughout the semester, including a midterm and several mock contracts. As such, I got to know Amy very well over the course of the semester. Throughout, she repeatedly impressed me as a smart, diligent, and impressive student: Amy was always prepared for class and ready to answer tough questions.

What most impressed me about Amy, however, was her capacity to learn from constructive criticism. Amy's mid-term exam in Contract Law only earned a B/B+ grade, which was a much lower score than I had expected her to receive based on her in-class participation. As with everything I have seen her write, the exam was very clearly written and demonstrated a good understanding of the material we had covered. But it also made some common errors that plague students early on, such as organizing the analysis chronologically rather than by legal issue, or failing to highlight the importance of key facts. After meeting with me to fully understand these and other issues on her mid-term exam, Amy worked relentlessly to improve. The result of her efforts was that her final exam was the top graded exam in the class by a wide margin. Although I frequently see students improve markedly over the semester on their exam writing, I have rarely seen students improve as dramatically as did Amy over her first semester in law school.

Since then, I have had the good fortune to work with Amy while teaching Tort Law during the Fall of 2022. Not only was Amy assigned to be the "structured study group" instructor for my class, but I independently hired Amy to help me provide individualized feedback to my Tort Law students. Amy's contribution to the class has been absolutely fantastic. For instance, because I believe providing prompt feedback to students is important, Amy dedicated herself to grading and providing individualized feedback on 70 student exams within a 5-day time period. Her comments to students were detailed and spot on. To accomplish this, Amy graded over 12 hours a day for four consecutive days, including a weekend. This type of effort was not something I asked for; instead, it reflected Amy's own drive as well her appreciation for the value that students place on prompt and detailed feedback. After providing this feedback, Amy then met individually with students to discuss their exams further. My students, needless to say, have repeatedly expressed to me how appreciative they are of Amy's efforts.

Let me conclude by noting that Amy has been a joy to have as both a student and as a teaching assistant. She is always organized, professional, and friendly. She understands how to communicate clearly and confidently, while also putting others at ease. And she consistently demonstrates an unrelenting drive for excellence in everything she does.

In sum, I am immensely confident that Amy will prove to be an outstanding law clerk. Please feel free to contact me if you should have any questions about Amy or if I can be of assistance in any way.

Sincerely,

Daniel Schwarcz

Daniel Schwarcz - schwarcz@umn.edu - 612-625-4272